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Claybrook v. Owensboro: Equality, Integration, and Struggle

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CLAYBROOK V. OWENSBORO:
EQUALITY, INTEGRATION, AND STRUGGLE

A Thesis
Presented to
The Faculty of the Department of History
Western Kentucky University
Bowling Green, Kentucky

In Partial Fulfillment
Of the Requirements for the Degree
Master of Arts

By
Lori A. Coghill

August 2000

CLAYBROOK V. OWENSBORO:
EQUALITY, INTEGRATION, AND STRUGGLE

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Acknowledgements

The case of *Claybrook v. Owensboro* involved a group of former slaves seeking equality for their children under the Fourteenth Amendment. The case was unique in that it was one of the first challenges to a municipality under the Fourteenth Amendment and the judge ruled in favor of the black men. Dr. Lee Dew, a local historian and retired professor from Kentucky Wesleyan College, has written about the case in his book, Owensboro: City on the Yellow Banks, and has also published an article in the Daviess County Historical Quarterly titled, “*Claybrook v. Owensboro*: An Early Victory for Equal Educational Opportunity in Kentucky”.

As an undergraduate at Kentucky Wesleyan I had taken several upper level history courses from Dr. Dew. My main interest for a thesis topic was in constitutional law due to my work in American Legal History with Dr. Patricia Minter and my work with the James Madison Fellowship Program at Georgetown University. After speaking with Dr. Dew he suggested the case of *Claybrook v. Owensboro* and pointed me to Dr. Marion Lucas’ volume, A History of Blacks in Kentucky, as well as Claybrook’s surviving great granddaughter, Emily Holloway.

I knew that due to the specificity of my topic information would be difficult to find. I first went to the Kentucky Room at the Owensboro-

Daviess County Public Library and began to search through the Owensboro newspapers. After completing my newspaper research, I then contacted the National Archives Southeast Branch in East Point, Georgia for a case file of *Claybrook*. The researcher informed me that cases in the 1800s were not in files but she did have a copy of the depositions and decisions in a Law Final Record Book. The entire record was handwritten and took several weeks to transcribe and type. The document contained all affidavits, depositions, as well as Judge John W. Barr's decisions. The Archives also provided me with a small amount of biographical information about Judge Barr.

The next step was to contact the Filson Club and Kentucky Historical Society for any information about the case or the judge. Filson Club actually had in one of its collections a series of letters from John Marshall Harlan, Supreme Court Justice, to Judge John W. Barr. Connecting the lone dissenter to the circuit court judge in the *Claybrook* case was important to prove the uniqueness of both men and the paradoxical nature of their opinions in light of the racial attitudes in Kentucky at the time. The letters did show an obvious friendship and agreement in positions dealing with racial equality but there was no direct mention of the *Claybrook* case. The Kentucky Historical Society verified information that I had already found and provided a list of documents and sources I had already included in my bibliography.

The final step was to interview Ms. Emily Holloway, the great granddaughter of Edward Claybrook. She was a delightful lady who took great pride in the accomplishments of her grandfather. She relayed information about the response and aftermath to the Claybrook decision that I had been unable to find. Holloway had a file of information about Claybrook, which contained his obituary, and other articles that I had found in my newspaper research.

In order to clearly understand the case in its full context, it is first important to look at the racial attitudes in Kentucky as well as the educational opportunities for blacks after the Civil War. The legal background for the actual case and the application of the Fourteenth Amendment by the Supreme Court also is necessary to fully grasp the arguments used by the attorneys for the black men.

The case discussion contains analysis of the arguments for the Owensboro Public School system, the children of the black men, and the decision of Judge John W. Barr of the Circuit Court in Paducah, Kentucky. The aftermath of the case includes the results of the *Claybrook* decision as well as the outcomes of *Plessy v. Ferguson* in 1896. Also this section contains reaction of the community to Claybrook after the decision and the “improvements” for black education in Owensboro.

The appendix contains pictures of the Upper Ward white school and the eventual black schools. I also took pictures of the areas today and

the contrast is still apparent.

I owe a debt of gratitude to Dr. Lee Dew, Dr. Patricia Minter, and Emily Holloway for their assistance and support in helping me to discover this fascinating case. As a teacher in what is now the Owensboro Independent School system and a historian, I could not help but to be captivated by the bravery and progressive attitudes of Edward Claybrook and Judge John W. Barr. I have been amazed through my research over the past year at the casual dismissal of the men by the community and the apparent disdain for their cause by many within not only the white but also the black community. I hope that through my research Ms. Holloway and the black students within our district can feel a renewed sense of pride in the efforts of Edward Claybrook and the other eleven men who simply and courageously sought equality in education for their children.

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CLAYBROOK v. OWENSBORO:
EQUALITY, INTEGRATION, AND STRUGGLE

Lori A. Coghill
77 pages

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Directed by: Patricia Minter, Marion Lucas, and John Hardin

Department of History

Western Kentucky University

In 1883 the case of *Claybrook v. Owensboro* was one of the first challenges to equal educational funding under the Fourteenth Amendment. The definition of the Fourteenth Amendment's equal protection clause was vague and left blacks with little guidance about their new found constitutional rights. By analyzing the case along with legal, educational, and local racial attitudes toward blacks at the time, historians and educators can better understand the evolution of the Fourteenth Amendment in state and local issues.

The case record from Federal Reports as well as the case file from the law final record book at the National Archives Southeast Branch were used in this analysis. Also, Emily Holloway, the great-granddaughter of the case's namesake, Edward Claybrook, was interviewed and provided information about the personal situation and status of the men who challenged the Owensboro school system. Records from the Freedmen's

Bureau also provided evidence of racial attitudes and conditions in Kentucky. A Filson Club collection of letters from John Marshall Harlan, Justice of the United States Supreme Court and lone dissenter in *Plessy v. Ferguson* to Judge John Watson Barr, Justice of the United States Sixth Circuit in Paducah, also provide evidence of similar attitudes of both justices concerning race and equality.

This case study offers a closer look at one of the first applications of the Fourteenth Amendment to education and a local government issue. In addition, the decision mentions for one of the first times the possibility of integration in the absence of equality. The evidence clearly shows a progressive attitude from the bench in the case as well as blatant inequalities between the black and white schools.

I. Introduction

The case of *Claybrook v. Owensboro* in 1883 demonstrated the need in post-Civil War society to define the meanings of the Fourteenth Amendment and more specifically the Equal Protection Clause. The case was peculiar in that Kentucky was a border state during the Civil War and the men demanding equality were merely freed people. A group of former slaves met to demand equal educational opportunities for their children. They then attempted to admit their children to the all-white school citing inequalities in not only the calendar and supplies but also more fundamentally in the funding for the two school systems. The twelve men, most of whom could not read themselves, wanted their children to be given the opportunity to obtain full equality with white children, which was through education.

Only two historians have written in any depth about the case. Lee Dew wrote not only in his book Owensboro: City on the Yellow Banks¹ about the *Claybrook* case but also in an article published in the Daviess County Historical Quarterly titled “*Claybrook v. Owensboro: An Early Victory for Equal Educational Opportunity in Kentucky.*” These studies of the case in the book and the article focused on the laws passed by the Kentucky General Assembly and their impact on Owensboro education.

¹ Lee Dew and Aloma Dew, Owensboro: The City on the Yellow Banks Bowling Green: Rivendall Publishing, 1988.

Similarly, in A History of Blacks in Kentucky, Marion Lucas cited the case and used its decision to demonstrate the attitudes toward post-Civil War education for freed blacks.²

Many important questions, however, have not been asked. What made this group of men, former slaves, challenge the school system in Owensboro? Many were illiterate and common laborers. Why did they think they could win this battle when precedent and the social climate did not support the equality they sought?

Serving as the judge of the Sixth Circuit Court Judge John Watson Barr presided in the case of *Claybrook v. Owensboro*, Barr was a native of Louisville and active in the Republican Party in Kentucky. What made Judge John W. Barr so liberal as compared to other justices at the time? Even the U. S. Supreme Court would later over³turn Barr's ruling with *Plessy v. Ferguson*. Barr's use of the Fourteenth Amendment and the badge of slavery argument were not supported by common law or precedent. What did Barr say in his opinion that might reveal his motives and reasoning?

Finally what lasting impact did the *Claybrook* decision have on education in Owensboro, the state of Kentucky, and surrounding counties

² Marion Lucas, A History of Blacks in Kentucky Vol. I: From Slavery to Segregation 1760-1891, Frankfort, Kentucky: The Kentucky Historical Society, 1992.

such as Hancock and Ohio? Although the decision by Judge Barr was eventually overturned with the case of *Plessy v. Ferguson*, the idea of equality in public education was still there even though it was not totally fulfilled until 1965.

These questions needed to be answered to understand completely the legacy of this case. Without an understanding of the motives of Claybrook and the other men, the case was merely about schools and not about a deeper desire for total social and political equality. The bravery and tenacity of these former slaves cannot be ignored in understanding the impact of the case. An interview with Emily Holloway, great-granddaughter of Edward Claybrook, and an examination of local newspaper accounts of the events leading up to the case, point to the conclusion that the very character of the men played a tremendous role in the victory in this case.

Understanding the motives of Judge Barr is also essential to grasp completely the legal challenges that these men faced in presenting the case before the Sixth Circuit Court. Many judges before him had ignored the Fourteenth Amendment's equal protection clause application to local and state matters. For most judges the application of the amendment was only at the national level. Notes from Barr's decision show his reasoning,

using the amendment and citing precedent in ways that had never been used before.

Finally without connecting the history of the Owensboro Public Schools after the *Claybrook* case as well as the *Plessy* decision, the complexity and influence of the case can not truly be understood. By examining the continuing struggle of blacks to gain equal facilities and eventual integration, we understand that Claybrook and the eleven other men had foresight for the proper interpretation of the Fourteenth Amendment and the promise of equality in America.

II. Post-Civil War Racial Attitudes in Kentucky and Owensboro/Daviess County

The years following the Civil War were tenuous and frightening for numerous African-Americans throughout the country and more specifically in the Commonwealth of Kentucky. Many blacks began to flee the South, headed North to what they hoped would be friendlier territory. Even though 71% of Kentucky's blacks were freed in 1865, the Kentucky Legislature refused to ratify the Thirteenth Amendment because of the complex attitudes of the former Border State toward the newly freed blacks.¹ One contemporary writer wrote, "Slavery died hard in Kentucky."²

As the slaves were freed, confusion mounted about where the new citizens should go and how they would assimilate into society. Most freedmen sought advice and counsel from federal authorities. The Freedmen's Bureau urged former slaves to obtain jobs, but former slave owners threatened those who would employ slave labor.³ During the war, some slaves received "Palmer's Passes" which, issued by Union soldiers,

¹ Lowell H. Harrison and James C. Klotter, A New History of Kentucky (Lexington, Kentucky: The University of Kentucky Press, 1997) 180.

² Ibid., 235.

were also known as “free papers” and pushed many blacks North even before the war ended.⁴

In November of 1866, the Freedmen’s Bureau was established in Kentucky. Regardless of the Thirteenth Amendment, most whites still viewed blacks as “inferior.” Many Kentuckians understood that Lincoln’s Emancipation Proclamation did not apply to Kentucky slaves but misunderstood that those blacks fighting for the Union were automatically emancipated. The four years following freedom were full of threats, acts of violence, and terrorism for most of Kentucky's black population.⁵

Compounding these conditions, justice for blacks was difficult to obtain in Kentucky. Law prohibited black testimony against whites until 1872. Many of the court officials and local law enforcement protected the accused and dismissed even the most damaging evidence.⁶ Lynchings were common practice with secret burials and destruction of evidence even more common.⁷

³ Marion B Lucas, A History of Blacks in Kentucky Vol. I From Slavery to Segregation, 1760-1891 (Frankfort, Kentucky: The Kentucky Historical Society, 1992) 178.

⁴ Ibid., 179.

⁵ Lucas, Blacks in Kentucky, 186-187.

⁶ Ibid., 190-191.

⁷ Ibid., 192-194.

Throughout Kentucky, residents posted public threats against freed blacks. In Daviess County, threatening notices appeared to destroy the property of those who rented or leased to black families. One notice charged that the Civil Rights Bill of 1866 and Freedmen's Bill was unconstitutional and warned that only local courts, not the Supreme Court, had jurisdiction over such matters.⁸ On February 12, 1867, a note left for a landlord who rented to black tenants proclaimed:

This certify [*sic.*] that this house was burnt on the cause and will give you until the first of february [*sic.*] so to get rid of these negroes that you have on your farm, if you don't we will burn ever [*sic.*] house that you have got [*sic.*] on your farm.⁹

Daviess County was not the only county in Kentucky issuing such threats. A threat of being driven away with firearms appeared in Henry County.¹⁰ A city official in Paducah commented on just treatment for "Negroes." He suggested that corporal punishment instead of fines were more reasonable since the blacks had no money and thus would likely not be as accountable as more prosperous white citizens (not quite the equality

⁸ A.W. Lawmill, "Daviess County Regulators Threaten Blacks: Will Burn Houses," Lawmill's Gem of Southern Literature, January 31, 1867.

⁹ Ibid., February 12, 1867.

¹⁰ "Notice," March 1, 1867, Letters Received Assistant Commissioners Office, vol. 16, Bureau of Refugees, Freedmen, and Abandoned Lands, Record

and freedom the former slaves had hoped for).¹¹ In Russellville black men were “robbed and shot almost daily.”¹²

Many of these vigilante groups referred to themselves as “regulators.” In Anderson, Mercer, Marion, and Boyle Counties, notorious groups of these self-appointed vigilantes terrorized black families. Skagg’s Men, the Bull Pups, and other groups, often with memberships over one hundred, practiced lynching and tried to rid their counties of blacks and their advocates. One white farmer wrote a letter to the governor about the groups stating, “We cannot lay down at Night [*sic.*] in peace [*sic.*] we are aroused shooting and yelling like mad or deranged men.”¹³

In addition to the harassment and terrorism facing many blacks daily, living conditions were almost unbearable. In Owensboro, most freedmen shared tiny tenements, stagnant water, measles, malaria, and scarlet fever. Little medicine was available or affordable for the former

Group 105, National Archives, Washington, D.C. (Hereafter cited LRACO, BRFAL; all citations are to Record Group 105, National Archives.)

¹¹ J. H. Donovan Letter to John Ely, October 8, 1866, LRACO, box 1, BRFAL.

¹² C.F. Johnson, Letter to Ely July 28, 1866, LRACO, box 3, BRFAL.

¹³ Harrison, A New History of Kentucky, 237.

slaves and their families.¹⁴ Those who were not fortunate enough to find a tenement were housed in old stables and barns.¹⁵

Beginning in June of 1868, the Freedmen's Bureau began visiting the sick in the black communities. One of the doctors reported serving over 400-500 blacks just in his first month in Owensboro, and that if the service stopped, many of the newly freed black citizens would simply die at the hands of a town that would rather see them die. Many doctors not paid by the Freedmen's Bureau demanded payment up front from blacks before offering their medical services. The charge of \$2-5 per visit made medical attention virtually impossible for most black citizens.¹⁶

Blacks indirectly gained under the Black Codes and Fourteenth Amendment the right to enter into contracts. Black couples were allowed to purchase marriage licenses. Many ministers protested the idea, but black families scraped together the money to make their unions legal.¹⁷ The marriage licenses cost \$1, and as in signing most documents, the bride and groom

¹⁴ R.A. Bell, Letter to Benjamin P. Runkle, April 23, 1868, LRACO, box 15, BRFAL.

¹⁵ M.B. Morton, Kentuckians are Different, Lexington, Kentucky: University of Kentucky Press, 1938, pp.21-27.

¹⁶ Alan Raphael, "Health and Social Welfare of Kentucky Blacks 1865-1870," Societas: Review of Social History, 2 (Spring, 1972), 1471, 1521.

¹⁷ Harrison, A New History of Kentucky, 236-237.

had simply to mark with an X because most newly freed slaves were not literate.¹⁸

The fears of whites led to more threats. A teacher hired by the Freedmen's Bureau in Bowling Green received a letter threatening:

Ku Klux Klans! Blood! Poison! Power! Torch!
Leave in five days or hell's your portion!¹⁹

Klan activity was also as rampant in Kentucky as elsewhere in the Reconstruction era South. In Louisville, a July 1869 newspaper report stated that the Klan was responsible for twenty-five lynchings and over one hundred beatings in a twenty-five mile radius of central Kentucky. Many in the media also supported the Klan by calling it "Judge Lynch." In Henry County, the Klan was especially active. A black Union soldier, Elijah Marrs, had his windows broken, causing him to sleep with guns and knives at night.²⁰

¹⁸ Lee Dew and Aloma Dew, Owensboro: The City on the Yellow Banks (Bowling Green: Rivendall Publishing, 1988) 63.

¹⁹ Ibid., 237.

²⁰ Ibid., 238.

Other acts of violence against blacks continued throughout Kentucky. On April 11, 1868, in Franklin, Kentucky, someone knocked down a young black boy with a gun. The man responsible was tried in a police court and fined only one penny.²¹ In a report on the general condition of freedmen in the Commonwealth, the report noted the condition was good but that Danville, Kentucky, had several cases dealing with a “band of regulators” intimidating and harassing freed blacks. The report also stated that the four cases reported were “the worst cases in the hands of the United States District Attorney.”²² Ironically, between 1870 and 1880, the black population in Kentucky increased by over 22%.²³ Seeking friendlier territory, many blacks moved North to Kentucky. To their dismay, the border-state was less than friendly. Many Kentucky towns had memorials and statues to honor Confederate war heroes. The Ku Klux Klan was also present in many of the communities in the Commonwealth. To the former slaves, moving North seemed logical, but Kentucky was not a true northern state.

Additional terroristic acts continued, and on February 25, 1871, a group of seventy-five to one-hundred men, led by a man recently freed

²¹ Louis Runkle, “Freedman's Affairs in Kentucky and Tennessee,” Report to the United States House of Representatives, May 12, 1868. 40th Congress, 2nd Session, document no. 329 (serial no. 1346), 19.

²² Ibid., 17.

²³ Statistics of the Population of the United States at the Tenth Census, June 1, 1880 (Washington, D.C.: Government Printing Office, 1883), 392.

from jail for killing an African-American man, made its way to a predominantly black area known as Stamping Ground. A black shoemaker, Cupin, was killed by seventeen of the men. Next the group moved to another black community, Watkinville. Here a group of black men were able to defend their community, but three were still killed. Many of the blacks escaped to Frankfort seeking protection from the government. The group of black men locked in the prison for safety called on the state militia to help protect them. Nevertheless, seventy-five masked men overtook the jailer, four guards, and the night watchman. The men entered the jail cell but quickly left; no one was seriously injured.²⁴

Likewise, an African-American mail clerk was assaulted on his way from Louisville to Lexington. Four men jumped on the train and “grappled” with him, but once the train sped up, the men were forced off. Ten troops were sent by the federal government to guard the mail agent. When threats persisted, service on the route was also temporarily discontinued.²⁵

Along with the above examples in Western and Central Kentucky,

²⁴ Harrison, A New History of Kentucky, 382-383.

²⁵ Ibid., 383.

Western Kentucky was not friendly to the black population. Many Kentuckians were afraid of the place that black men and women would take in society. The federal government offered feeble protection to the new citizens. Although some had fought for the Union, the fear of assimilation and integration was too alarming.

Additionally, a man in Bath County, Sam Bascom, was taken by a group of twenty-five men on horses. He was accused of arson and hanged in a field by the men. Bascom pleaded for his life and with very little evidence supporting his involvement in the fire many believed he was innocent of all charges.²⁶

Similar acts of violence, although not reported by the press, also occurred in eastern Kentucky. Citizens in Maysville requested that the governor send state troops to put down a “band of cut-throats” who called themselves “Regulators.” Two hundred men eventually surrendered to authorities and provided a list of eight hundred men involved in such activities.²⁷

The Freedmen’s Bureau, in addition to acts of violence against blacks, also reported on the conditions of hospitals for freedmen. In Owensboro, the hospital contained 196 patients with thirty-four new admissions for a total of 230. The hospital was overcrowded and poorly

²⁶ Ibid., 384.

²⁷ Ibid., 386.

staffed for the number of patients. Eight patients died in the month and twenty-three were discharged. The report also noted the poor living conditions in Owensboro, which led to the easy transfer of disease in crowded housing with poor supplies of water.²⁸

The Bureau also reported on May 1868 citing nineteen “outrages” or acts of terrorism and one shooting against blacks. In Meade County, a group of men organized to steal from black citizens. The Bureau and local police were working together to arrest the men but had been unsuccessful. Five men in costume robbed a black man named Toby Valentine.²⁹

Threats were often made to the Freedmen’s Bureau and its workers. Darby Hoskins, a black Bureau employee, was whipped and hit with a pistol repeatedly. Richard Robinson, a Bureau staff member, and his son-in-law were threatened with lynching. Irad Dunn, a supporter of education for blacks and treasurer for a charitable organization for poor blacks, left his property after repeated threats. Boyle Ousley, a white teacher of freedmen, was visited by a gang one evening and sent harassing letters.³⁰

²⁸ Runkle, “Freedman’s Affairs,” 17.

²⁹ Ibid., 18.

³⁰ Ibid., 19.

The Klan in Owensboro contained members ranging in occupations from ministers, bankers, doctors, and prominent businessmen. The membership with a roster of 350 men had equally bitter sentiments toward the newly freed blacks.³¹ Many whites spoke out against emancipation, and although the proclamation did not include Kentucky, many slaves fought for the Union to obtain freedom. Congressman George H. Yeaman of Owensboro spoke out against the proclamation in the House of Representatives:

The President, in his last message to this House, admits that slaves are property, and that emancipating them is destroying or divesting property. Then I would be pleased to be informed, if he can take my slave, by what system of reason do you convince me he cannot take my horse or my plow, or the land I cultivate with the horse and plow? I apprehend the only reason will be found in the fact that there is in this country no great political party who hates horses, plows, and land.³²

Blacks were still seen as property even after the proclamation and the passage of the Fourteenth Amendment. By comparing slaves to horses and plows, Congressmen Yeaman and many others made clear their lack of respect for the new black citizens.

Violence, poor sanitary conditions, crowded housing, and poor schools plagued the black population of Kentucky in the aftermath of the Civil War. Even those in Frankfort denied blacks respect and even

³¹ Dew, Owensboro, 134.

refused to ratify the first of the Reconstruction Amendments. Blacks were not subject to equal citizenship in any part of Kentucky in spite of the Thirteenth Amendment. The biggest battle, however, would not be over medical conditions, housing, marriage bonds, or lynchings. Instead, education became an important venue for the battle of equality in Kentucky and the United States because of its power to shape the future for both black and white Kentuckians.

³² George Yeaman, "Speech before the House," Congressional Globe, 37th Cong., 3rd Sess., 135.

III. Post-Civil War Education in Kentucky and Owensboro/Daviess County

Education in Kentucky after the Civil War was far from outstanding. The Common School report of 1871 described most school buildings as “Exceeding rude and deplorable.” Only 40% of school-age students even attended school.¹ However, blacks still wanted the opportunity to have an equal education for their children. Most blacks were more eager than whites to attend school because they recognized the significance of an education in furthering their social equality.

Kentuckians were more reluctant to see integration of schools than in other public areas because of a lack of respect of the intelligence and need for education of blacks, blatant racism, and more pragmatically a fear of black power. In 1871, the state bar accepted two black attorneys. Blacks testified in court and by 1876 were serving on juries in the Commonwealth. Some black citizens even began to run for local offices. Although Kentucky was more progressive than more southern states in allowing blacks voting rights and citizenship, educational equality was another matter. Public schools were segregated in Kentucky, and even The Kentucky Institute for the Blind had its own segregated school.

Similar to rules on educational segregation, residential segregation

¹ Hambleton Tapp and James Klotter, Kentucky: Decades of Discord (Frankfort, Kentucky: Kentucky Historical Society, 1977), 188-189.

was also an unspoken rule in larger cities in Kentucky. Many property owners placed restrictions in their deeds prohibiting the sale of their property to blacks. Those who did rent to or sell to black families were often harassed and threatened by organizations like the Ku Klux Klan.²

Generally, education in Kentucky was not a top priority for elected officials. In 1867, Kentucky Superintendent Zachariah Smith insisted on increasing taxes to help save the ailing system. Part of the increase would go to raising teacher salaries from \$19 to \$25 per month.³ Most wealthy families sent their children to private academies rather than to the public common schools. In areas with high percentages of blacks, attendance in private academies was greatest.⁴

Some of the initial laws passed by the Kentucky General Assembly regarding the education of blacks, while specific as to the funding for schools when, unfortunately, vague when describing how the schools were to be established and maintained. The state legislature in 1867 placed the burden for collection for and establishment of black schools under the jurisdiction of the county governments. A two dollar poll tax for each black male to be collected by the sheriff would be given to the county

² Lowell H. Harrison and James C. Klotter, A New History of Kentucky (Lexington, Kentucky: University of Kentucky Press, 1997), 247-248.

³ Tapp, Decades, 185-186.

⁴ Ibid, 187.

treasurer. The next part of the law read that the trustees of the district “could establish a Negro school” in their particular county. After establishment, statistics on attendance were to be reported again to the county courts. The court could allot \$2.50 per pupil for the black schools.⁵

Prior to this law in 1867, the Freedman’s Bureau had operated some black schools in Kentucky from 1864-1867. Most were held in local churches with minister’s wives often the teachers, and a school term of usually two months.⁶ Kentuckians were bitter in their opposition to these schools. From 1866-1868, ten Freedmen’s Bureau schools were burned and another “blown up.” Many agents of the Bureau were hesitant to come to Kentucky because of its reputation for violence. The bureau established 400 schools in Kentucky teaching 19,000 students; however, when the Freedmen’s Bureau left Kentucky in 1870, most of the schools closed.

In 1867, the Kentucky Legislature did pass “An Act for the Benefit of the Negroes and Mullatoes of this Commonwealth.” This law contained three sections:

1. No part of the fund authorized to be raised by the aforesaid act shall be applied to school purposes as therein provided, except whatever excess there may be after providing for the negro and mulatto paupers in each county.

⁵ Mary Sudman Donovan, “Kentucky Law Regarding Negroes: 1865-1877” (M.A. Thesis, University of Louisville, 1967), 46.

⁶ Marion Lucas, A History of Blacks in Kentucky Vol. I: From Slavery to Segregation 1760-1891 (Frankfort, Kentucky: Kentucky Historical Society), 235.

2. No part of said fund collected in the present year shall be applied except as provided in the first section of this act.
3. This act shall be in force from its passage.⁷

In the act, paupers are mentioned before the educational needs of blacks. Perhaps the hidden purpose of the act was really to remove the responsibility of former owners to care for indigent slaves. The mention of paupers first also demonstrates the idea that caring for the impoverished among the black population would apparently be of greater need than their education. The idea was that if the impoverished blacks were appeased, then hopefully the threat of violence would lessen. Obviously, the Act did not obligate the establishment of black schools, nor did it give any suggestions or direction for how to do so. Despite the act's feeble attempt to empower districts to establish black schools, sixty-five districts did not have any black schools.⁸ Large classes were typical in those schools that did exist. On average fifty students were enrolled in a class but attendance remained poor as only thirty-five students attended regularly.⁹

In July of 1869, a "Colored Education Convention" met in Louisville. Most of the 250 delegates, receiving some education as slaves, asked the Kentucky legislature to, "rise above prejudices... and find it in

⁷ Kentucky Documents, Annual Report of the Superintendent for Education, 1868, Legislative Documents No. 31. (1867), 277.

⁸ J.D. Pickett, Common School Report 1880-1881, Annual Report of the Superintendent for Education (Lexington, Kentucky: Kentucky Press, 1882), 145.

⁹ Lucas, A History of Blacks, 235.

your hearts to be just, because we are human beings, the children of a common parent, creatures of a common destiny, and should be instructed alike in all that pertains to humanity.” The group also wanted “equal taxes for equal education.” The group met again in 1870, but with the departure of the Freedmen’s schools, there was little to talk about.¹⁰

By 1870, only 8,000 blacks attended common schools. Superintendent of Instruction H. Henderson claimed integration was “impossible,” but he did see a need to educate the newest group of voting citizens. By 1874, he had set up a separate black school system. Again, the primary funding for the schools under the system would be a poll tax on all black males. The assumption was that black men would be given the opportunity to and would exercise their new right to vote.¹¹

Provisions for the new system included dividing districts into areas with no more than 120 children aged six to sixteen. One teacher would be employed for three months or two months if the district had fewer than sixty children. Also, the provisions included a stipulation that prohibited a black school within one mile of a white school. In ninety-three different counties, 452 districts were established the first year.¹²

¹⁰ Ibid., 245.

¹¹ Tapp, Decades, 204-205.

¹² Ibid., 206.

Despite the new school system, many black students were forced to attend schools in sub-standard conditions. In Lexington, ninety black students with one teacher were in a twenty by twenty foot schoolroom. In Owensboro, two hundred students crammed into a thirty by forty foot room daily, compared to white students in the same size rooms with only fifty or fewer students.¹³ Governor James Bennett McCreary felt that the system was “off to a good start.” He hoped that “colored people will take hold of the system presented to them, and show that they appreciate it by earnest efforts to have their children attend school..., Persons who seek to make the colored people dissatisfied with the system that has been provided are doing them a great injury.”¹⁴ Perhaps the governor had not attended or visited either of the schools in Lexington or Owensboro. Even if the governor had made a visit to the schools, the idea at the time was that any type of education for blacks was a tremendous improvement and service to the African-American community.

This great service of education received only one-half of the funds collected from the taxes on blacks, while the other half was set aside for a pauper’s fund. The commissioner of taxes was to keep a separate count of “Negro taxes and property” for the fund. No part of any of the laws concerning black education provided for building of actual schools.¹⁵

¹³ Ibid., 207.

¹⁴ Ibid., 144-145.

In addition to funding, other large disparities existed between the black schools and the white schools. The black schools were on a three-month calendar, by contrast most white schools had a five-month calendar. Most teachers in the black schools had no previous teaching experience and some even had their teaching certificates revoked in the white schools.¹⁶ In the same report, 272 black schools were listed as schools that should be condemned. There were 825 white schools in Kentucky compared to 476 black schools. Schools held in churches varied, too, with 160 black schools to thirty-three schools for whites. New construction also was unequal with 262 new white schools built to 36 black school buildings.¹⁷ In 1883, the year of the *Claybrook* decision, blacks students received per pupil funding of \$1.30 per year from the state government as compared to \$2.10 per year for white students.¹⁸

Attorneys began to question the legality of these striking disparities. Emmet W. Bagby of Paducah (later the attorney for the plaintiffs in Edward Claybrook case) challenged the poll tax. Bagby, a white attorney, chair for the Republican Party and a former congressional candidate, argued the case of *Kentucky v. Jesse Ellis* in 1881. He

¹⁵ Donovan, "Kentucky Law Regarding the Negro," 44.

¹⁶ Kentucky Documents, Report of the Superintendent for Public Instruction for four scholastic years ending June 30, 1891, Legislative Documents No. 34. (1891-1892 vol.) 19.

¹⁷ Ibid., 119, 127.

¹⁸ Lucas, History of Blacks, 256.

maintained in the federal circuit court that the state could not tax Ellis, a black man, when it did not have the same tax on whites. Bagby alluded to the Fourteenth Amendment's equal protection clause in declaring the entire system for collecting funds for schools unconstitutional. Republican leaders in the Kentucky House further pressed the issue by sponsoring a bill to merge funding for schools. The House, however, tabled the bill. Slanted by Republican ideas, the *Louisville Commercial*, criticized the politics which led to the bill's defeat by stating that "Kentucky is the only State in the Union, which has not accepted the war amendments to the Federal constitution."¹⁹

The same day that the House tabled the bill, Judge John Baxter ruled in favor of Jesse Ellis in Paducah. Baxter's opinion alluded to the Fourteenth Amendment and read

... any fund created by the state for educational purposes must be equally and uniformly distributed among both classes, and neither in the raising of the fund by taxation, nor in the distribution of it, must there be any inequality or any discrimination on account of race or color.²⁰

Baxter made reference to his previous ruling in *U.S. v. Buntin*, a case concerning black schools in Ohio. Baxter ruled that if the schools were not equal, then the practice of segregation would have to be "dismantled."

¹⁹ J.Morgan Kousser, "Making Separate Equal: Integration of Black and White School Funds in Kentucky," *Journal of Interdisciplinary History*. X (Winter 1980), 402-404.

²⁰ *Ibid.*, 404.

With these two decisions, the Kentucky legislature could “equalize, integrate, or close the schools.” A compromise forced the law into a referendum in the upcoming August election, a clever strategy which would place the burden on the voters and not the state legislators. The referendum never made the ballot, and the House Democrats saw to its defeat. Meanwhile conditions remained deplorable in black schools, Henry Allen Laine, a student in the black schools, later described his experience as uncomfortable. Laine’s first educational experience was in a school with a two-month calendar. His teacher, who used only Webster’s Blue Spelling Book, was illiterate and could not even write his name. His second school was on a three-month calendar with his teacher only slightly more qualified. Not until 1874 did teachers in black schools have professional requirements. A law in 1874 required only an examination in spelling, mathematics, reading, and writing for black teachers.

The physical conditions of the schools were also part of Laine’s description. In 1880 Laine attended a five-month school that was held in a former slave cabin in which the seats were made of split log benches with no backs or legs.²¹ Similar conditions existed in Owensboro with fifty to ninety students sharing a small schoolroom and one teacher. The books used in the black schools were often discarded texts from the white schools. Also, materials, such as pencil and paper, were scarce. In 1894,

the state finally required the same qualifications for teachers in both white and black schools.²²

In 1880, the Kentucky General Assembly passed a law allowing Owensboro Public Schools to “establish free schools for the education of children in its boundaries.” The law also authorized the mayor and city council to establish a seven-member board of trustees for the black schools. The board could build or rent buildings for the schools, so it approved the renting of a building and began the task of creating a school for “colored children between the ages of six and twenty years.”²³

In the fall of 1871, the Owensboro Public Schools started under the “Act to organize and establish a system of public schools in the City of Owensboro for white children” passed by the Kentucky General Assembly on March 13, 1871.²⁴ On May 3, 1871, the school board ordered two schools in each of the two wards. The Upper or First Ward School purchased the former Baptist College building. The Second Ward School was constructed for \$7,820. Each of the ward schools had primary, intermediate, and senior grades. Primary grades included six levels,

²¹ Henry Allen Laine, “My Life,” (Oct. 12, 1947 typescript autobiography in the Museum (Eastern Kentucky University, Richmond, Kentucky), 2-3.

²² Thomas A. Venable, “History of Negro Education in Kentucky,” Doctoral diss. (George Peabody College for Teachers, 1953), 110-111.

²³ Lee Dew and Aloma Dew, Owensboro: The City on the Yellow Banks (Bowling Green, Kentucky: Rivendell Publications, 1988), 95.

²⁴ Hugh O. Potter, History of Owensboro and Daviess County Kentucky (Owensboro, Kentucky: Daviess County Historical Society, 1974), 95.

intermediate grades included four levels, and senior grades included four levels. Each level consisted of five months of study.²⁵ For the black students, a building was rented on Poplar Street between Third and Fourth Streets. The building was thirty by forty feet and was to house five hundred students to be taught by three teachers.²⁶

These inequalities led a group of black men to challenge not only the school buildings themselves but also the constitutionality of the funding of the separate schools. Entering the Upper Ward school quietly on September 18, 1882, the group of men organized a “protest” which included two ministers, a teacher, a hotel owner, factory workers, house servants, waiters, and laborers. Edward Claybrook, whose name appeared on the top of the petition and became later connected with the case, was also a common laborer.²⁷

The group had held several meetings and collectively wrote and signed a petition to present to the school board. The tone in the meeting was labeled “militant” by the press, but when the men approached Superintendent A.C. Goodwin, he commented on their courtesy and lack of any “further demonstration.”²⁸ The local paper declared their petition “absurd” and blamed the entire incident on the white Republicans

²⁵ Ibid., p. 96.

²⁶ Dew, Owensboro, 95.

²⁷ Lee A. Dew, “*Claybrook v. Owensboro*: An Early Victory for Equal Educational Opportunity in Kentucky,” Daviess County Historical Quarterly Vol. VIII. (January 1990), 3.

who wanted the blacks to be able to vote.²⁹ Obviously, these former slaves could not possibly see the inequalities for themselves, nor could they ever compose and formulate a petition listing their grievances. To the surprise of many in Owensboro, they did just that. Then with the aid of an attorney from Paducah, these men, who had just twenty years earlier been bound as property, filed action in the Sixth Circuit citing violations of the rights of their children to an education under the Fourteenth Amendment's equal protection clause.

²⁸ Ibid., p. 5-6.

²⁹ Ibid., p. 7.

IV: Constitutional and Legal background
For the Case of
Claybrook v. Owensboro

To insure equal opportunities for their children, a small group of black men marched into the all-white Upper Ward school in Owensboro, Kentucky on September 18, 1882, and demanded equal educational opportunities for their children. The equality that the men demanded found in the Fourteenth Amendment's equal protection clause ratified in July 1868, stated in Section 1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.¹

This amendment “nationalized” civil rights, giving the authority of enforcement to the federal, not the state, government. National citizenship superceded state citizenship.²

Although the Civil Rights Act of 1866 had intended to grant equality to all citizens, many Republicans were not comfortable with its enforcement and constitutionality. The Republicans accepted the concept

¹ Alfred Kelly et al, The American Constitution: Its Origins and Development (New York: W.W. Norton & Co., 1991), A26-27.

of dual citizenship in the state and national government and saw the dual roles as overlapping and complementary. The federal government granted citizens the right to enter into contracts, but the state determined the conditions and nature of the contracts. The national government's job, in the eyes of the Republican Party, was to guarantee civil rights to all citizens.

Many party members, however, still feared the private denial of civil rights as not in violation of the Civil Rights Act of 1866. President Andrew Johnson vetoed the Civil Rights Act, but Congress was able to override the veto. His veto message included his hesitance to offend state's rights supporters.³

Because of much dissension and debate, a Joint Committee of Congress – the famous Joint Committee of Fifteen-- experienced frustration in ratifying the Fourteenth Amendment. The original draft proposed in January of 1866 threatened a loss of representation in the Congress for states denying blacks the right to vote but left some language ambiguous enough to please the states. The amendment suggested “no state shall” which did not command states to comply. The House passed this first version, but the Senate rejected it. On April 30, 1866, the Joint Committee finally drafted what was ratified as the Fourteenth

² Ibid., 332-333.

³ Ibid., 330-331.

Amendment. The first section of the new amendment clearly defined citizenship and contained the “equal protection clause” which denied states the right to “deprive” citizens their civil rights. Sections two and three handled the problem of representation under the 3/5 clause of the original constitution. Section two clearly stated that for purposes of representation the “whole number of persons” would be counted for seats in the House as well as the Electoral College. Also, states that denied citizens the right to vote or representation, could be subject to losing electors based on the citizens denied their right to vote by the state. Section four dealt with the war debt while section five allowed Congress to pass appropriate legislation to enforce the amendment.⁴

Passed by the House and Senate on June 13, 1866, the Fourteenth Amendment “nationalized civil rights,” it also allowed states by its language to continue to control the enforcement of these rights and liberties under federal supervision. Some southern states were bribed with re-admittance to the Union upon ratification of the new amendment. Tennessee was the first to regain its representation by agreeing in July 1866 to ratification.⁵

Likewise, to encourage other states to ratify, Republicans, in defense of the Fourteenth Amendment, even went so far as to cite former Chief Justice Roger Taney, hardly a friend to African Americans. In the

⁴ibid., 332-333.

1857 *Dred Scott* case, Taney clearly stated in his opinion that citizenship was determined by the national government.

No state has the power to make Negroes citizens within the meaning of the Constitution... For if they were... entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police regulations which they considered to be necessary for their own safety. It would give to the persons of the negro race... the right to enter every other State whenever they pleased...⁶

In the same decision, Taney claimed that since the constitution did not recognize “negroes” as citizens, then they were not.⁷ Thus in debate, the Republicans pointed out the exclusion of blacks as citizens could be remedied by granting their citizenship through the constitution. In turn by gaining citizenship, as all citizens, their certain civil rights were implicitly guaranteed.⁸ They also feared the Civil Rights Act of 1866 would not pass a test of constitutionality.

After the battle over the Fourteenth Amendment came the passage in 1869 of the Fifteenth Amendment granting blacks the right to vote. Then the biggest problem facing the federal government was enforcement of the new Reconstruction amendment. Two Enforcement Acts were passed in 1870 and 1871 which made illegal intimidation, bribery, and

⁵ *Ibid.*, 334-335.

⁶ *Dred Scott v. Sanford*, 19 Howard 393 (1857).

⁷ Don E. Fehrenbacher, *Slavery, Law and Politics* (New York: Oxford University Press, 1981), 193-194.

discrimination of voters and placed larger city elections under the immediate control of the national government. Also, under the direction of President Grant and led by Congressional Republicans, the Ku Klux Klan Act was passed in April 1871 to curb violence against blacks by increasing punishments for those found to be involved in Klan activity. Each of these laws clearly demonstrated the national government's ability to implement and oversee civil rights laws.⁹

Initially, the federal courts appeared to be reluctant to uphold the policy of Reconstruction. Many on the U. S. Supreme Court were states rights advocates who saw the need for nationalism when dealing with the race problem. The first blow against Reconstruction came in 1866 with *Ex parte Milligan* when the court ruled that military courts were unconstitutional tribunals for private civilians if civil courts were available. Other decisions in 1867, *Cummings v. Missouri* and *Ex parte Garland*, knocked down provisions in the Missouri constitution and the Federal Test Act, which imposed *ex post facto* laws and oaths denying involvement in rebellion.¹⁰ Despite some of these rulings, the Court was reluctant to rule definitely on the constitutional validity of Reconstruction.

⁸ Kelly, The American Constitution, 330.

⁹ Ibid., 358.

¹⁰ Ibid., 353.

Now, the Court began to shift to a more “broad view of national power” when looking specifically at the Reconstruction policy. Chief Justice Chase, for instance, in a circuit court opinion declared unconstitutional a Maryland law dealing with the apprenticeship of blacks. In his decision in *In re Turner* (1867), Chase cited the Thirteenth Amendment in upholding the Civil Rights Act of 1866. Justice Noah Swayne, in another circuit case, also upheld the Civil Rights Act of 1866 under the Thirteenth Amendment in *U.S. v. Rhodes* (1866). Swayne in his opinion boldly interpreted the Thirteenth Amendment to include guarantees for blacks of “free institutions,” not just an outlawing of slavery.¹¹ Federal judges also supported this interpretation. The circuit court repeatedly upheld the idea that Congress had the power to make laws against those denying black citizens “equal protection” under the law relying on the Thirteenth Amendment for its authority.

In 1873, the Court heard the first cases involving the Fourteenth Amendment which were the *Slaughterhouse Cases*. Decided 5-4 and authored by Justice Miller, the majority opinion held that the intentions of the Fourteenth Amendment were to protect the rights of African-Americans. Miller stated for the majority that the area of national citizenship was founded in an “individual’s direct relationship with the federal government.”¹² These benefits included rights of protection in

¹¹ *U.S. v. Rhodes*, 27 Federal Cases 785 (1866).

foreign lands, “access” to the national government, and the ability to benefit also from the stipulations of treaties with other countries.¹³

Also, the Court noted that the Fourteenth Amendment protections had only previously been enforceable at the federal level under the precedent of the 1833 case of *Barron v. Baltimore*. The case held that the Fifth Amendment, along with the Bill of Rights, was only applicable to the national government, not the state governments. Even though the precedent was upheld until the adoption of the Fourteenth Amendment, the Marshall court did acknowledge national supremacy. Miller upheld the idea of federal supremacy in acknowledging that the Fourteenth Amendment transferred powers of civil rights from “states to the federal government.”¹⁴

Additionally, the court also defined the proper role of the federal government in defining state abuses of civil rights. In *U.S. v. Cruikshank*, a circuit court ruled in 1874 that the Fourteenth Amendment allowed for federal limitation of state activity where the activity was an attempt to deny rights based on “racial hostility.”¹⁵ The Supreme Court affirmed the decision in 1876 by stating that the purpose of the Fourteenth Amendment was to “furnish a federal guaranty against any encroachment

¹² Kelly, *The American Constitution*, 355-356.

¹³ *Ibid.*, 196.

¹⁴ *Ibid.*, 356.

¹⁵ *Ibid.*, 357.

by the States upon the fundamental rights which belong to every citizen as a member of society.” In 1876 *U.S. v. Reese* also acknowledged the amendment’s power to prohibit states from excluding blacks but not forcing a guarantee of certain rights.¹⁶ Likewise, the courts imposed further limitations to the power of the new amendments. *U.S. v. Reese* further limited the implication that the Fifteenth Amendment granted suffrage. The Court ruled that the states still controlled the process and method of election and that the Enforcement Act cited was not constitutional.¹⁷ Also in 1883, the Supreme Court heard the case of *U.S. v. Harris*. A group of white men had been indicted under the Ku Klux Klan Act of 1871. The Court ruled that the indictments were not valid because such private acts were not covered as a denial by the states.

In the same year that the circuit court in Paducah ruled on the Claybrook suit, the Supreme Court also ruled on the *Civil Rights Cases*. The Court in its 1883 decision invalidated the 1875 Civil Rights Act because the act was aimed at private, not state, discrimination. The idea of the “badge” of slavery was used in these cases. The idea held that denial of access to public accommodations was perpetuating a stigma attached to the former slaves. These “badge and incidents” of slavery, according to Justice Bradley were “ridiculous” and were assuredly not part of the intent

¹⁶ *Ibid.*, 357. The case came from Lexington, Kentucky.

¹⁷ *Ibid.*, 358.

of the Fourteenth Amendment's equal protection clause.¹⁸ But in 1883, the Supreme Court and Justice Bradley denied this argument. Bradley found no way in which Congress could erase the stigma of slavery.¹⁹ On the other hand, Justice John Marshall Harlan stated in his famous 1896 dissent to *Plessy v. Ferguson* argued that "the Constitution is color-blind."²⁰ However, he was the "lone dissenter" in the case that would relegate blacks to second class citizenship for more than fifty years with most of his contemporaries disagreeing with his interpretation.

The climate in the courts was uncertain. Most decisions were based on a narrow majority. With a 5-4 split common in the Court, it was apparent that the justices were not certain how to interpret the new amendments. As a result, cases that dealt with the Fourteenth Amendment's equal protection clause could be won only if the denial of rights was tangible.

The case of *Claybrook v. Owensboro* was heard in federal district court from 1883-1884. Supreme Court precedent of that same time period and case law concerning the equal protection clause was confusing and unclear at best. The Supreme Court heard four cases in 1880 dealing with equal protection. *Strauder v. West Virginia* knocked down a law

¹⁸ *Ibid.*, 357.

¹⁹ Kelly, *The American Constitution*, 357; *Strauder v. West Virginia*, 100 U.S. 303, 1880; *Ex parte Virginia*, 100 U.S. 347, 1880; *Neal v. Delaware*, 103 U.S. 370, 1880; *Virginia v. Rives*, 100 U.S. 339, 1880.

²⁰ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

limiting juries to whites only while *Ex parte Virginia* declared the exclusion of a black man from a jury a “violation of the Civil Rights Act of 1875.” *Neal v. Delaware* went one step further by noting that even if a state’s constitution did not expressly mention blacks as citizens, then to deny them service on juries was still a violation of the federal constitution under the Fourteenth Amendment. Undermining these four victories for enforcement of the equal protection clause was the 1880 case of *Virginia v. Rives* in which the court ambiguously and contradictorily ruled that the absence of blacks on juries was not a denial of equal protection. This precedent opened the door for state and local regulations to deny blacks the opportunity to serve.²¹

During this time the lower federal courts were reluctant to deny states rights but at the same time were upholding federal power in some areas. Thus, the bravery of some judges, such as John W. Barr of the Sixth Circuit and John Marshall Harlan, a member of the United States Supreme Court and the lone dissenter in *Plessy v. Ferguson* and a dissenter in the *Civil Rights Cases*, demonstrated the foresight of some concerning the application of the Fourteenth Amendment. Harlan disagreed with Justice Bradley, who wrote for the majority, that separate

²¹ *Ibid.*, 358.

facilities were in no way a “badge of slavery.”²² Many were afraid to what extent the equality defined under the amendment would bring blacks closer to the rights of whites.

In the case of *Claybrook v. Owensboro*, the men who were challenging the municipality of Owensboro, Kentucky laid their case on an amendment that was relatively new and poorly defined by the court. The Supreme Court certainly would not uphold the denial of equal educational facilities under the “badge” of slavery argument. Also, the acknowledgement of the Court that the intent of the Fourteenth Amendment was to protect the rights of Negro citizens was tenuous at best, with only a slight 5-4 ruling of the Supreme Court. But a group of ex-slaves from Owensboro, Kentucky moved forward and sent their case to the Sixth Circuit Court of the United States in Paducah, Kentucky on November 20, 1882.

A fortunate coincidence for the men from Owensboro was that Judge John W. Barr, a close personal friend of John Marshall Harlan and fellow Republican Party member, would hear their case. Under the “badge and incidents” of slavery argument, the men would try to prove denial of rights under the Fourteenth Amendment through existing inequalities in educational opportunities for their children. The badge of

²² *Civil Rights Cases*, 109 U.S. 3, 1883.

slavery idea held that the acts of discrimination were in essence still a reminder of the oppression of slavery and set freed blacks apart from whites. This discrimination could be found not only in schools but also in hotels, restaurants, housing, and other public accommodations. In the same year, the case now known as *Claybrook v. Owensboro* was heard before the Sixth Circuit Court in Paducah under a judge who disagreed with Bradley. The attorney for the men also made use of the recent cases upholding the Fourteenth Amendment and defining the equal protection clause.

In spite of some of the cases in 1880 supporting the cause of Edward Claybrook and the other men, the courts were wavering in their support of concretely upholding the rights of blacks under the Fourteenth Amendment. For a group of men who were mostly illiterate and had never read the Fourteenth Amendment, they were certain of their cause and sent their petition to admit their children to the white school to the Sixth Circuit Court in Paducah on November 20, 1882.

V. The Case:
Claybrook v. Owensboro

The case of *Claybrook v. Owensboro* surprisingly did not impact jurisprudence in the segregated South but in a more mid-western town -- Owensboro, Kentucky. Even though Owensboro had (and still has) a statue of a Confederate hero erected in 1895 in front of a local government building, the town was economically progressive.¹ Yet socially the attitudes about race were not as progressive as in the North and the rest of the Mid-West as in many of the towns of the "New South."

Edward Claybrook, a common laborer, owned some property that he had received as a result of tenant farming. Along with his wife, Julia, and twelve children, he lived at 403 Elm Street in Owensboro on the west-side, traditionally a black neighborhood. Claybrook, born in 1821, at the time of the case was sixty-two years old.²

The Claybrook case evolved out of a challenge to public school funding. Edward Claybrook, a black community leader, and other prominent blacks in Owensboro held several public meetings to discuss a strategy to achieve equal funding of a black school. Claybrook was chairman for a local group of black men concerned with the plight of their families with the evolution of their equality. The group included ministers, teachers, hotel proprietors, waiters, and common laborers. The

¹ Hugh Potter, History of Owensboro and Daviess County Kentucky (Owensboro: Daviess County Historical Society, 1974), 246.

² "Obituary of Edward Claybrook," Owensboro Daily Tribune, June 24, 1896.

de jure practice at the time gave all tax money raised from white taxpayers to the white schools and all tax money raised from the black taxpayers to the black schools. The eight hundred white students of Owensboro had two schools and eighteen teachers and attended school nine to ten months out of the year. On the other hand, the black students had one school, three teachers, and a three-month school term.³

In spite of the fact that they had been removed from the shackles of slavery only twenty years earlier, the group was well organized and articulate in their quest for equality in the Owensboro schools because. Sharing a common goal, these diverse former slaves sought a realization of the potential for equality afforded them in the Fourteenth Amendment. Under an 1866 Kentucky law titled “An Act for the Benefit of the Negroes and Mulattoes in this Commonwealth,” a separate fund for black schools was created based solely on taxes collected from blacks and did not consist of enough funds to run properly a school equal to the white schools.⁴ The group, containing about twelve members and varying in their occupation and economic status, met on September 13, 1882, and drafted the following unanimous resolution:

Whereas, we the colored citizens of Owensboro, Daviess County, Kentucky feeling confident that we have been debarred from public school facilities guaranteed to us by the laws of the United States.

³ Claybrook v. Owensboro, 16 Federal Reports 297, 1883, 297-299 (1883).

⁴ A Digest of the General Laws of Kentucky (Lexington, Kentucky: University of Kentucky Press: 1866), 738-739.

And whereas we have taken, as we consider, the most honorable, judicious measures in presenting our claims to the city council in reference to the same.

And whereas the said council informed us in answer to our earnest plea for our local rights and facilities that they have no right to make any provisions for the education of the colored children, therefore be it.

Resolved, with all due respect to our worthy and honorable council and citizens, that we will immediately proceed as we have heretofore informed them, to lay our claims before the U.S. District Court in Paducah, Kentucky and therefore ascertain who has the right to make such provisions as will give us equal school facilities as the laws require, and that we inform the lawyer already employed that we are ready.⁵

Also on the same page as this resolution appeared an article entitled, “Local Gardener Produces Exceptional Sunflower,” detailing a local gardener and her “exceptionally” large sunflower. The placement of the article concerning the grievances of the black community next to the gardening column, clearly demonstrated how trivial the community considered their complaints. The citizens of Owensboro did not take seriously the challenge that blacks were presented worthy of the same educational opportunities as whites. The titles of the articles in the paper, “Renewing their Threats” and “A Big Bluff” clearly demonstrate its lack of respect for blacks as political beings and full citizens. Both articles

mock the attempts by the black men to organize and seek the rights that were guaranteed them under the constitution.

Even prior to 1880, state law allowed only for the establishment of “colored” schools in the counties, not in the cities of the Commonwealth. In 1880, laws enabled the city to create the black school and tax its black citizens to support it. A tax of two dollars per person and a thirty-cent property tax created objections by the articulate group of former slaves led by teacher Richard Varian. The group drafted a document of protest to the obvious inequality presented through the funding of the black school. The men initially demanded only sufficient funding to operate the schools, not integration.

When this request was ignored, a group of three black students attempted to enroll on September 18, 1882, in the white Upper Ward school. The principal referred the group to the superintendent, who denied them admission. The committee and children left quietly and the men including Claybrook now had the ammunition they needed to enter the courts.⁶ Five of the men attempted to enroll three black children at the Upper Ward School at Seventh and Walnut in Owensboro. Owen Barrett, one of the five, later told a newspaper reporter that the men had intentions

⁵ “Renewing Their Threats,” Owensboro Messenger and Examiner, August 2, 1882.

⁶ Lee Dew and Aloma Dew, Owensboro: The City on the Yellow Banks. (Bowling Green: Rivendall Publishing, 1988), 4-6

of obtaining more evidence for their suit and knew that they would be turned away.⁷

Not only would this case decide the implications of the Fourteenth Amendment for school funding but also would have a profound impact on the application of the amendment to municipalities. If the Fourteenth Amendment applied to states, then could the federal court apply the principals to the city governments authorized by the issuance of charters? The case provided a chance to expand the definitions of the Fourteenth Amendment both in terms of racial equality and in the jurisdiction of the federal courts.

Edward Claybrook, whose name became permanently affixed to the case, was, according to the Census of 1870, a resident of Owensboro's First Ward, a largely African-American neighborhood.⁸ Mr. Claybrook, thirty-three at the time of the census, unable to read or write, and a former slave, was married to Julia, twenty-eight. The Claybrooks had twelve children by 1882, but the 1886 city directory listed only four: Jason, 8; Archie, 7; Susan, 2; and Emily, 6 months.⁹

⁷ Ibid., 7-8.

⁸ Refer to map of black districts in appendix.

⁹ Owensboro Directory, Owensboro Messenger Jobs Room, J.W. Carter and Chas. Haney Publishers, 1886. The directory had the asterisk notation for the Claybrook family as "negro."

In 1878, the first black school was established in Owensboro. Nevertheless, the school provided inadequate facilities and fewer materials and teachers than the white schools. On July 18, 1882, the Board of Trustees of the two black schools called a meeting with all the local black parents. The three original leaders were Richard Varian, Chair of the black school; Giles Crump, Chairman of the meeting; and Charles T. Jackson, Secretary. The draft of the original resolution read:

The method of taxation for purposes of common schools in the state, the method of distributing the per capita between white and colored children and the existing laws governing said schools are all unconstitutional, because a discrimination is made in all respects between white citizens and their children and colored citizens and their children. We have not suitable school buildings nor money with which to defray the necessary expenses of establishing or conducting our schools in such a manner as to make them offer for colored children anything like the facilities now provided for white children, and by the existing laws we have no power to raise sufficient money for said purposes.

We most respectfully petition the mayor and council to provide For us suitable buildings and sufficient money to give our children reasonably good facilities for obtaining plain English education.¹⁰

Emily Holloway. Interview. February 17, 2000. Ms. Holloway noted that although Claybrook supposedly could not write and never attended school that all of his children and grandchildren did learn to read and write and attended school regularly.

¹⁰ Keith Lawrence, "Ex-slaves fought for education rights," Messenger-Inquirer. February 12, 1977.

The law referred to by the men was the 1871 act titled, “An Act to Organize and Establish a System of Public Schools in the City of Owensboro for White Children in Said City.” The law allowed the formation of a white school for all white children over six years. The act gave the school board authority to issue \$30,000 in bonds for actually building the schools and the power to collect taxes on property at twenty five cents per \$100 along with a “capitation” tax of \$2 on all white males which was raised in 1873 to thirty cents per \$100.¹¹ In 1880, the Kentucky General Assembly finally authorized the city of Owensboro to provide “free schools for the education of colored children”¹² and also allowed for the taxation of black property for the purposes of education.¹³

The resolution was not acted upon until after September 5 after the white school term had already begun. Among the white community, anxiety and tensions increased out of fear of an attempt by the black citizens to integrate the schools. On the night of September 5, black parents held a meeting chaired by Edward Claybrook. The group began to draft the resolution that they would eventually unanimously adopt on September 13. The resolution pointed out with “all due respect” that the colored children of Owensboro were being denied the education

¹¹ Lee Dew, “*Claybrook v. Owensboro: An Early Victory for Equal Educational Opportunity in Kentucky*,” 4

¹² Acts of the Kentucky General Assembly, Frankfort, Kentucky, 1880, 29-34.

¹³ Dew, “*Claybrook v. Owensboro*,” 13.

guaranteed them by the laws of the United States, referring to the equal protection clause of the Fourteenth Amendment. The resolution ended with a promise to place the grievances of the black parents before the Circuit Court in Paducah, Kentucky.¹⁴

The men, who had twenty years earlier been slaves, respectfully submitted their petition to the city council¹⁵, which responded with silence.¹⁶ The August 30 article warned the citizens of Owensboro that the colored people “declare they will enter their children in the schools for the whites.”¹⁷ The people of Owensboro, black and white, were aware of challenges to school equality. The Hawesville Plaindealer published an article on August 2, 1882, which stated that the U.S. Court had decided that “colored people” were entitled to their equal quota of the school tax for the common schools. Without increasing taxes, the article further stated, the white school funds would have to be cut to further support black schools.¹⁸ How dare the blacks demand equality and furthermore insist upon taking money away from the white students?

¹⁴ Lawrence, “Ex-Slaves,” February 12, 1977.

¹⁵ Glenn Hodges, “The Road to Civil Rights,” Messenger-Inquirer, February 20, 1995.

¹⁶ C.W. Bransford and Urey Woodson, “A Big Bluff,” August 30, 1882; ibid “Renewing their Threats,” September 13, 1882.

¹⁷ Bransford and Woodson, “A Big Bluff.” Owensboro Messenger and Examiner, August 30, 1882.

¹⁸ Ibid, “A Vote for Additional Taxes,” Messenger-Examiner, August 2, 1882.

The question of what to do with these former slaves had troubled the white controlled state of Kentucky for some time. Ultimately the Superintendent of Public Instruction Henderson was forced to address the issue of educating the newly freed blacks. A former Methodist minister and Confederate soldier who laughed at the idea of integrated schools, he did not support a common fund that would take money away from white schools. In 1871, Henderson's lack of action was obvious when a state auditor showed that black property taxes in the state totaled \$2,232 and in 1872 only \$4,347 for the education of 8000 black students. Henderson touted the implementation of the poll tax for funding of Negro schools. The proposed law by Henderson also included increases in black property taxes and capitation taxes on each male citizen at the polls. The law had more "promise than power" because of the few blacks who had property and even fewer who exercised their Fifteenth Amendment rights of voting.¹⁹

At this time in 1871, the Owensboro Public Schools were relatively new, in fact, the board met for the first time on April 7 of that year. The first superintendent was J.H. Gray. The first school, the Lower Ward School, where Claybrook and others had attempted to enroll their children, was built for \$7,820, costing more money than all the property taxes raised from black citizens in 1871. The second school, the Upper or

First Ward, was purchased for \$12,000 and was also known as Third Street School. These two schools had primary, intermediate, and senior high programs. There was a total of nine classes in each.²⁰

Demanding equal facilities, the original petition before the Court contained the names of Edward Claybrook, Walter Whittinghill and Marshall McLean, along with their children Samuel Claybrook, Daniel Whittinghill and W.H. McLean.²¹ The group had hired Mr. Bagby, a white attorney from Paducah, to handle the matter. The men began their complaint with the quotation of the amended law passed by the Kentucky General Assembly on February 26, 1873, enabling the city of Owensboro to collect property taxes for the purpose of funding white schools as per the exclusion in the original law.

The men also noted that as of February 27, 1880, the city had not made any “provisions for the education of colored persons.” A law enacted that day by the Kentucky General Assembly stated that the mayor and city council of Owensboro could “place a capitation tax on each male,

¹⁹ Hambleton Tapp and James Klotter, Kentucky: Decades of Discord (Frankfort, Kentucky, Kentucky Historical Society, 1977), 187, 205.

²⁰ Potter, A History of Owensboro and Daviess County, Kentucky, 95.

²¹ Claybrook v. Owensboro, Law Final Record Book, U.S. Circuit Court, Western Kentucky Division (B/39/04/D #30), p. 213. The 1870 Census of Daviess County only listed four children for the Claybrook family and none were named Samuel. However, Claybrook's great-granddaughter states that he had twelve children. The census in 1870 did not list children over the age of 16.

African citizen up to two dollars and place an ad valorem tax on property of thirty cents on \$100.”

The petitioners also noted that in addition to the ad valorem and capitation tax, the white citizens were also additionally taxed an ad valorem of ten cents per \$100 for the upkeep and grounds of the white schools. The property value for the city of Owensboro was \$2,300,387 in 1882 for 1,262 white citizens. The value of property for the 339 black citizens was merely \$32,275. These values, along with the capitation taxes, produced an income of \$9,425.16 for the white schools and \$774.82 for the black schools.²²

Stating in the petition that they had asked the mayor and city council for equal educational facilities and were denied a response, Claybrook, Whittinghill, and McLean also declared that their children had been denied admission to other public schools in the city. They then quoted the Fourteenth Amendment’s equal protection clause and claimed that not only their children but also all the colored children of Owensboro were being denied the equal protection afforded them in the provision.

Judge John Watson Barr of the Sixth Circuit Court ordered a temporary injunction in September of 1882 forcing the city to distribute equally the money for schools until the case could be heard. The petition listed E.W. Bagby and C.S. Marshall as the attorneys for the black men.

²² Ibid., 214.

The original writ was signed and verified on November 21, 1882, by Mr. Edward Claybrook of Owensboro, Kentucky.²³ As a result of Claybrook's signature of verification appearing first on the writ, the case took on his name and became labeled *Edward Claybrook et al complainants v. City of Owensboro et al defendants*.

The case was scheduled for argument January 1, 1883. The attorneys for Mr. Claybrook noted in an amendment to the original grievance that the facilities provided for white children far exceeded those for black students in Owensboro.²⁴ Named in the suit as defendants were Mayor James K. Tharp, Treasurer John Wandling, and members of the city council and school board.²⁵ United States Sixth Circuit Court Judge Barr heard the case.

Affidavits were taken prior to the Sixth Circuit Court hearing on January 1, 1883. The deposition taken from Superintendent Alexander Goodwin stated that "four or five colored" men entered the Upper Ward school on September 18, 1882, and asked to register their children in the school. Goodwin stated that he told the men that he had no authority to admit colored children in the white school. He said the men looked at each other and one remarked, "... that is a refusal." Goodwin also noted

²³ *Ibid.*, 217.

²⁴ *Ibid.*, 217-218. See appendix for pictures of the First Ward school denied Claybrook and the other complainant's children as compared to the two black schools provided for the black students of Owensboro.

that none of the men provided him with information about their citizenship or other “qualifications” for their children’s admission. Ironically, Goodwin noted twice in his deposition the color of the men and their children as both colored and African, and he was certainly aware of the qualification that prohibited him from admitting the children from the Upper Ward school.²⁶

Mayor Tharp and school board president H.P. Tompkins responded to the suit in a brief filed before the Sixth Circuit. In the affidavit dated December 23, 1882, the attorneys for the city of Owensboro cited that the city had followed the letter of the law as passed by the Kentucky General Assembly. The Mayor and Council claimed the act only gave them authority to issue bonds to erect white only schoolhouses, not ones for black students. The city officials further elaborated that the allowed taxes were collected from the black citizens of Owensboro and applied to the education of black children. The attorneys added that the black students had at least one school as large as the white students, especially taking in to consideration the taxes acquired from the black citizens as well as the fewer number of black students.²⁷

²⁵ “Affidavit for Plaintiff,” Claybrook, Law Final Record Book, November 20, 1882, 219.

²⁶ Affidavit for Defendant,” Goodwin, Law Final Record Book, December 28, 1882, 221.

²⁷ Ibid., 222-223.

The defendants also noted that the plaintiffs had not been deprived equality, and even if they had, it was out of the power of the city to do anything about it. They then listed the rules for admission to school as follows:

The following class of children will not be permitted to attend the schools.

1. Those under six years of age.
2. Those who do not give satisfactorily evidence of having been vaccinated or otherwise secured against the small-pox.
3. Those who are afflicted with any contagious disease or who came from a family where such disease prevails.
4. Those whose person or clothes are untidy.
5. Those who do not procure the textbooks and Stationary [*sic.*] required.²⁸

The defendants stated that the four to five men offered no proof that the children they requested be admitted met any of the above qualifications but yet failed to stipulate the ones that they did not meet. They also quoted the school board policy regarding ward limitations, which held that pupils must attend school in the ward in which they reside. Again the men offered no proof of their residence in the First Ward; however, they were never asked for the proof either.²⁹

²⁸ *Ibid.*, 225. The statement of authority of the Board of Trustees prefaced the rules.

The defendants later amended their response brief on January 10, 1883, to include descriptions of the black schools. Although the white schools were described by the plaintiff as “commodious,” the black schools, one in the First and one in the Second Ward, contained furniture, maps, globes, and other “school apparatus.” The two colored schools each had ten or more rooms according to the attorneys for the defense. They also noted that it would be a major inconvenience since many of the black families lived on the East End of town, and the Upper Ward School was located on the West End for many of the black students to attend the Upper Ward School.³⁰ Surprisingly, the defense brief also included statistics concerning the two school systems. The white schools had eight hundred children and eighteen teachers. The black schools had five hundred students and three teachers. Discrepancies also existed in the length of the school calendar. White children attended school nine to ten months; whereas, colored children attended school for three to five months.³¹ The casual inclusion of these statistics demonstrates the immunity that these officials had developed to the obvious numerical inequalities. The simple fact that they would include them clearly shows the deep-seated prejudice and lack of regard for African-Americans as equals of the white citizenry.

²⁹ Ibid., 225-226.

³⁰ Ibid., 227.

³¹ Ibid., 228.

Claybrook and the others submitted their brief on January 10, 1883.³² The judge granted the first request for that temporary injunction of all money raised for the purpose of education be divided 5/13 for the black schools and 8/13 for white schools in proportion to the ratio of white to black student population. In response to the injunction, Goodwin contested the number of black students as only being 350 even though he had earlier stated there were five hundred black students. The judge still extended the injunction on all moneys raised for the purpose of education until the case could be heard. On August 2, 1883, the clerk of the Owensboro Public School Board appeared before the court to clear up the number question. He testified that in 1882 there were 1,363 white children and 356 colored children of school age in the city of Owensboro.³³ Suddenly the 800 white students had increased by 563 and the 500 black students had decreased by 144.³⁴ This difference in numbers changed the ratio to almost one black student to five white students. This ratio decreased the proportion of funding by nearly one-half. The attorney for Claybrook and the other men pointed out this attempt to change the numbers to Judge Barr, who was clearly furious with the antics of the defendants.

³² No signature for Claybrook is anywhere found in the case file probably because of the fact that he was illiterate. Thus a Notary Public, John H. McHenry, vouched for the plaintiffs admission of the validity of the statements contained in the brief.

³³ Ibid., 228-229.

³⁴ Ibid., 229.

On April 11, 1883, Judge John W. Barr of the Circuit Court in Paducah, Kentucky delivered the opinion of the court stating that unless the schools were equal, the black students had the right to attend the white school. Barr ruled that under the laws of Kentucky the inferior schools of the black students were in violation of the Fourteenth Amendment's equal protection clause. He espoused the amendment as a "priceless heritage," not just for blacks, but for all future Americans.³⁵

Judge Barr further ruled that the injunction would require one-fourth of all money collected.³⁶ The story was front-page news in the Semi-Weekly Messenger when the final decision was delivered in January 1884. Owensboro residents knew little about the Sixth Circuit judge, and the decision reached Owensboro months later. Judge John W. Barr delivered his written opinion in November of 1883, but news did not hit Owensboro until January. John Watson Barr, a native of Versailles, Kentucky, was nominated by Rutherford B. Hayes, and was active in the Republican Party in Louisville, Kentucky, where he was an attorney. The circuit court operated in one federal district with circuits in Frankfort, Louisville, Covington, and Paducah. When traveling judges were unavailable, Barr would hold court alone. Such was the case in

³⁵ Ibid., 299, 302.

³⁶ A compromise between the discrepancy of one to five and one to three of total student population.

Claybrook.³⁷

Judge Barr declared the 1871 state law “An Act to Organize and Establish a System of Public Schools in the City of Owensboro for White Children in Said City” unconstitutional. Barr quoted the law by stating that the funding of white schools through taxes collected from white citizens and the subsequent funding of black schools through taxes collected from black citizens was “discrimination.” He further noted that this discrimination was contrary to the Fourteenth Amendment’s equal protection clause and pointed out the inequalities in the nine-month white calendar to the three-month black school calendar. He then stated, “The colored race is entitled to have a fair share of the fund raised by such taxation applied to the maintenance of the colored schools.”³⁸

Barr further elaborated on the apparent inequalities not only in the separate school boards but also in the actual funds raised through the taxes. The white taxes totaled \$9400 while the black taxes collected amounted to only \$770. In addition to the monetary inequalities, the white school had, according to Barr, “two excellent school-houses, excellent school facilities, eighteen teachers, and a session of nine or ten months in each year.” On the other hand, Barr pointed out “the colored children only

³⁷ Judges of the United States, 2nd edition. Bicentennial Committee of the Judicial Conference of the United States, 1983.

³⁸ Claybrook v. Owensboro. 16 Federal Reports 297, 296-298 (1883).

kind very inferior to those of the white children, and a school session of about three months in each year.”³⁹

The defendants, according to Barr, even admitted to the inequality. However, the attorneys for the city of Owensboro “insisted” that although it is an inequality, it is a lawful one and that the circuit court had no jurisdiction in this matter.⁴⁰ Barr disagreed and also knocked down the notion that because the school systems were independent corporations and the citizens were stockholders, the courts had no jurisdiction.⁴¹ Barr stated that because the schools were common schools “exercising a governmental function” for the public and not a private institution, the taxes as required by the state of Kentucky could not be withheld from some and not others.⁴²

Barr then began to tear apart the 1871 law section by section. He first pointed out the provisions of Section One:

... all white children over six years of age within each ward shall have the equal right of admission to the schools of such ward, and no fees or charges for their tuition shall ever be charged in any of the schools of such ward, and no fees or charges for their tuition shall ever be charged in any of the schools. And it is expressly provided that only white children be admitted to said schools.⁴³

³⁹ Ibid., 299.

⁴⁰ Ibid., 299.

⁴¹ Ibid., 299.

⁴² Ibid., 303.

Section Twenty-one provided for a commissioner for the “common schools,” and since the language read as such with local control and as part of the common-school system of the state, then the Sixth Circuit had proper jurisdiction. Barr also noted that the notion that the citizens of Owensboro were stockholders in the school “corporation” was ridiculous since the taxation was not voluntary.⁴⁴

He then laid the constitutional groundwork for the case. Although the case did not directly involve the Thirteenth or Fifteenth Amendments, the intention of the amendments to aid the former slaves in seeking equality could not be disputed. In addition, he argued that the first section of the Fourteenth Amendment clearly applied in this case. After quoting the first section and emphasizing the equal protection clause, he then defined it in terms of the case:

This section gives a citizen of the United States or of a state, and even persons who are not citizens, an additional guaranty of the enjoyment of their fundamental rights. This guaranty is not against individual action or encroachment, but against the state, and its laws and its officers. These rights of the citizen are still to be protected and enforced, as between man and man, by and through state laws and agencies, and not by the United States and its laws.⁴⁵

As authorities, Barr cited the cases of *Virginia v. Rives* and *U.S. v. Harris*. The case of *Virginia v. Rives* in 1880 ironically allowed states to exclude

⁴³ *Ibid.*, 299.

⁴⁴ *Ibid.*, 300.

blacks from juries at “local discretionary authority.” Cleverly, Barr twisted the citation to demonstrate the authority of the court to rule on local policy.⁴⁶ According to Barr, localities were liable, not necessarily private individuals for protection of civil rights.⁴⁷

Barr then turned to the distinction between equality under the law and equal benefit of the law. The defendant had argued that the equal protection clause did not apply to equal benefit and that education was a benefit, a view Barr rejected by stating that if this were true, then separate taxation could be used for police protection, courts, and other government “benefits.” If this were allowable, distinctions between race could also lead to distinctions in origin. Those of German or Italian descent could then pay for their own services. Barr then reaffirmed that equal protection could not be guaranteed under such a system. The laws must be equal in both benefit and “burdens and anything less would not be equal protection of the laws.”⁴⁸

Barr again cited several cases including *Ex parte Virginia*, *Strauder v. West Virginia*, and *Neal v. Delaware*. In *Ex parte Virginia*, the court found in 1880 that exclusion of blacks from jury service was a violation of the Civil Rights Act of 1875. Additionally in 1880, *Neal v.*

⁴⁵ *Ibid.*, 301.

⁴⁶ Alfred Kelly et al, The American Constitution: Its Origins and Development (New York: W.W. Norton & Co., 1991), 358.

⁴⁷ *Ibid.*, 357.

⁴⁸ *Claybrook v. Owensboro*, 16 Federal Reports 297, 302, (1883).

Delaware held that even though the state law or constitution did not “exclude” blacks, the denial of jury service still violated the Fourteenth Amendment.⁴⁹ Similarly, *Strauder v. West Virginia* also in 1880, ruled that exclusion of blacks from juries was a violation of the equal protection clause of the Fourteenth Amendment. In the following, Barr quoted the majority opinion in *Strauder* to show the application of the Fourteenth Amendment to equal protection of the races

It ordains that no state shall deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the law. What is this but declaring that the law in the states shall be the same for the blacks as for the white; that all persons, whether colored or white, shall stand equal before the laws of the states;

Barr applied directly the equal protection clause of the Fourteenth Amendment. In *Strauder* the exclusion was in jury service. For Barr, the exclusion in *Claybrook* was educational opportunity and appropriate funding:

...and in regard to the colored race, for those protection the amendments were primarily designed, that no discrimination shall be made against them by law because of their color?

Barr acknowledged the “design” of the Fourteenth Amendment as an insurer for African-Americans against abuses such as in *Strauder* and *Claybrook*. According to Barr, the very nature of the Reconstruction Amendments was to stop cases like these.

The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity or right most valuable to the colored race – the right to exemption from unfriendly legislation against them distinctively as colored, exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race.⁵⁰

Next Barr noted that although the language of the amendment might be prohibitive, still the granting of certain rights for blacks was also implicit in the language. Also, he quoted the “badge of slavery” argument with his statement that the “implications of inferiority in everyday society” could still result in blacks being considered a “subject race.”

Barr then cited *Ward v. Flood*, a California Supreme Court case that defined the Fourteenth Amendment in terms of education, which stated that equal protection applied to “each child as to all other children.”⁵¹ He again affirmed his nullification of the 1871 law, assuring that “all the colored children of Owensboro” were entitled to the equal protection of the laws. He admonished the state and city to follow the nullification and injunction as per the precedent in *Davis v. Gray* whereby

⁴⁹ Kelly, The American Constitution, 358.

⁵⁰ Claybrook v. Owensboro, 16 Federal Reports 297, 302-303, (1883).

⁵¹ Ibid., 303.

a state Supreme Court had placed an injunction on a governor and land commissioner in Texas.⁵²

Barr clearly saw the intent of the Fourteenth Amendment's equal protection clause as means to insure true equality for all races. He also saw the jurisdiction of the court as clearly justified in upholding this intent; however, thirteen years, later the Supreme Court would disagree.

In 1896, the case of *Plessy v. Ferguson* declared that separate could be equal. Homer Plessy, a very white mulatto traveling on a train car designated for only white passengers, sat in the white car and challenged the idea of separate public facilities. The court upheld the right of the train-company to segregate cars if equal facilities were available for the black passengers. The lone dissenter was John Marshall Harlan.

Harlan, a Kentuckian, was also a correspondent of John Barr. Harlan referred to Barr as "The Judge" and mainly talked with him about his health. Harlan had lost several public offices in Kentucky because of his vocal opposition to slavery. With both men active in the Republican Party in Kentucky, Harlan received threats from Klan members after many of his public speeches opposing racial discrimination.⁵³ Harlan visited

⁵²Ibid., 304.

Barr in Louisville in 1891 prior to the *Plessy* case.⁵⁴ It is not certain that the men discussed the *Claybrook* case or the discrepancies in black and white facilities. However, Harlan's dissent in many ways mirrored the opinion of Barr in the *Claybrook* case. Harlan wrote

In respect of civil rights, common to all citizens, the constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights... In view of the constitution, in the eye of the law, there is in this country no superior, dominating, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither tolerates classes among citizens.⁵⁵

Both men rejected the idea of differences between the races and the ability of the constitution to discriminate based on any differences. The ruling was a pyrrhic victory for blacks, as well as the community group led by Edward Claybrook, because the 1896 opinion of the court in *Plessy v. Ferguson* mooted Barr's decision by declaring separate facilities acceptable.

⁵³ Louis Hartz. "John M. Harlan in Kentucky," *A Kentucky Sampler: Essays from the Filson Club Historical Quarterly*, Lowell Harrison and Nelson Dawson eds. (Lexington, Kentucky: University of Kentucky Press, 1977), 309, 311, 316.

⁵⁴ John Marshall Harlan, Letters to John W. Barr, June 4, 1891, October 8, 1901, April 24, 1904, (Louisville, Kentucky: Filson Club Private Collection). Interestingly, the letters enclosed in the appendix were almost illegible and were simply addressed to John W. Barr, Louisville, Kentucky.

Although Harlan and Barr believed in the “color-blind” constitution, the citizens of Owensboro, Kentucky, and the justices of the Supreme Court were not quite ready to accept it.

⁵⁵ *Plessy v. Ferguson*, 163 U.S. 537, (1896).

VI. Aftermath

The city of Owensboro first heard about Barr's decision in the Semi-Weekly Messenger which ran an article on January 29, 1884, entitled "School for the Darkies" with the subtitle of "Judge Barr rules finally that the colored children of Owensboro must have a pro rata benefit of the white school fund."¹ The paper stated that the existing funds would be sufficient for both the black and white students, but other provisions would have to be made to provide funds for building and grounds maintenance. A summary of Barr's opinion was included along with the declaration as unconstitutional the 1880 law regarding the education of "colored children."²

Emily Holloway, Claybrook's great-granddaughter, states that he sold some personal property to pay for the expenses of the attorneys, Bagby and Marshall. After the case was decided, Claybrook faced bitterness in both the black and white communities. Whites resented the use of their funds to support black schools while blacks resented the harassment the suit had brought them. Holloway notes that several of Claybrook's twelve children changed their name from Claybrook to Claybrooke or Claybrooks to avoid association with their "infamous" father. Emily Holloway, Claybrook's great-granddaughter, points to the

¹ "School for the Darkies," Semi-Weekly Messenger, January 29, 1884.

² Ibid., p. 1-3.

absence of many of the twelve children's descendants as proof of the name changes.

Claybrook faced many tragedies during and after the case. While the case was being argued, Claybrook's wife died while delivering their twelfth child.³ In 1895, Mr. Claybrook died in an "insane asylum" in Hopkinsville. The hospital has refused to release records to Ms. Holloway. All she has is the January 24, 1895 obituary:

An Old Negro

Ed Claybrook, about 75 years of age, who died Monday night at the Western Lunatic Asylum, at Hopkinsville, was buried here today. He was sent from here to the asylum a month or two ago. He resided in this city for many years and bore the reputation of an honest, clever, old darky.⁴

The greatest tragedy was that the cause he had fought for had not yet succeeded. The community made token attempts to build new black schools but none were comparable to the white buildings. Fortunately for Claybrook, he did not live to see the 1896 case of *Plessy v. Ferguson* which overturned Barr's decision in *Claybrook*.

In 1884-1885, the black schools came under the authority of the white school system after the *Claybrook* decision. In 1885, the Upper

³

Interview, Emily Holloway, 17 February 2000.

Ward black school was built for a price of \$2,500 and remained the colored school until 1922.⁵ The black school was built for one-third the cost of the white school also built in 1885, hardly the equality that Claybrook and his friends had in mind.

The case of *Claybrook v. Owensboro* led to the construction of two black schools, one in both the East and West Ends in 1885.⁶ In a report of the Owensboro Public Schools in 1890-1891, the superintendent's "colored school" report read as follows:

The work in this department is of special interest; the spirit of the pupils is excellent, and they work with a will. I am glad to note the enthusiasm that is beginning to be felt in the work of the classes, as well as of the individual pupils. Habits of neatness are forming; neatness in regard to work upon slate, paper, and black-board; in the care of their books and desks and rooms, as well as personal neatness. I give much attention to these classes.⁷

The superintendent's major concern in the black schools was not curriculum but personal hygiene. The same report showed high rates of absences among the two black schools with average attendance at the east end school of ninety-nine with an enrollment of 168 and on the west end

⁴ "An Old Negro: Obituary of Edward Claybrook," Owensboro Daily Tribune, June, 24 1895.

⁵ Ibid., p. 96.

⁶ See Appendix pictures.

⁷ "Owensboro Public Schools 1890-1891," Twentieth Annual Report (Owensboro, Kentucky: New Inquirer Publishing, 1892), 13.

187 attendance with an enrollment of 324.⁸ Also included in the report were teachers and their class loads. Flora Hussey taught first and second grades with an enrollment of ninety students, while Daisy Wheeler taught second, third, and fourth grades with an enrollment of seventy-eight students. The superintendent justified the large enrollments because of poor attendance of black students.⁹

To meet the needs of Owensboro's students, Owensboro Public schools constructed new buildings. In 1921, Paul Dunbar High School was built for blacks on the east-end of town at a cost of \$2,800.¹⁰ The school system requested a \$300,000 bond issue for the construction of both Dunbar and what is now Owensboro High School.¹¹ Thus, \$242,000 was spent on Owensboro High and \$20,000 to build Emerson Elementary School for whites. The new white high school contained a 964-seat auditorium, locker rooms, the superintendent's office, woodworking shop, commercial department, mechanical drawing room, domestic science wing, art rooms, and science laboratories. The three-story structure was originally 234 by 169 feet. The gym was hailed as "a place of beauty and joy" with seating for over one thousand.¹²

⁸ Ibid., p. 19.

⁹ Ibid., p. 21.

¹⁰ See appendix for pictures of both Dunbar and Owensboro High School.

¹¹ Hugh Potter, History of Owensboro and Daviess County Kentucky (Owensboro, Kentucky: Daviess County Historical Society, 1974), 96.

¹² Dew, Owensboro, 132-133.

A 1946 report issued by the Bureau of School Service listed and assessed the condition of all buildings in Owensboro Public Schools. The report mentioned Western High School in poor condition and “totally unfit for continued use.”¹³ The same report also listed school population and a map of the “Negro Population” but in spite of the warning about Western the report claimed that black students enjoyed the same facilities and comforts of white students.

For Owensboro, though, true integration was still far off, and equality did not come until 1962 when Owensboro High School was integrated.¹⁴ The former West End Negro school had been remodeled and turned into an all black high school, Western High School, which had become dilapidated. Owensboro High School basketball players remarked on the condition of the gym floor, which was wavy and bowed in many places, making it difficult to run down the court. The teachers at Owensboro High School would annually send discarded library and textbooks to Western. Western High School’s mission was to further “the education of the Negro children of Owensboro.”¹⁵

¹³ “Public School Buildings in Owensboro, Kentucky,” Bulletin of the Bureau of School Services. (Vol. XIX, No. 2. Lexington, Kentucky: University of Kentucky Press, 1946), 50.

¹⁴ Lawrence, Keith, “Ex-slaves fought for education rights.” Messenger-Inquirer. February 12, 1977. The school board adopted an integration policy in 1956, but did not fully implement it until 1962.

¹⁵ Dew, Owensboro, 135.

On August 29, 1955, the Owensboro School Board adopted a “Resolution on Integration.” In 1955, the school board began to allow students at Western to attend Owensboro High for classes that were not offered in their own school. For example, ROTC students could go to Owensboro High from Western. This policy applied to high school students only until May 1957 when black junior high students were also allowed to attend the white junior highs for the same reason. Nevertheless, the process did not begin until 1961 and was completed in 1962. Superintendent Estes feared immediate integration and chose to move “gradually.” H.E. Goodloe, principal at Western High, encouraged and persuaded the black community to go along with Estes’ plan. By 1962, many had dropped out of Western resulting in an enrollment of only seventeen for the senior class of 1962. The low numbers forced the board to close Western and integrate the high schools with the building becoming a black elementary and junior high until the transition was complete. Because many neighboring counties had bussed their black students to Western, the decision forced many of them to integrate also. Western was then renamed Goodloe Elementary School after its principal but was not fully integrated until 1965. With the integration white teachers and black teachers were asked to relocate to new schools and forced to work together in the new integrated system.¹⁶

¹⁶ Ibid., 173-174.

Throughout the rest of the Commonwealth, integration was not as painstakingly slow. Governor Lawrence Weatherby refused to bow to pressure from other southern governors to ignore the decision in *Brown v. Board of Education*. Chief Justice Earl Warren, speaking for a unanimous court in *Brown*, ruled that “Separate educational facilities were inherently unequal.”¹⁷ The 1954 Supreme Court decision was a bit late for Claybrook and the men from Owensboro. However, Governor Weatherby decided to follow the policy of integration implied by the *Brown* decision and said, “Kentucky will meet the issue fairly and squarely for all.”¹⁸ The new governor in 1955, Albert Benjamin Chandler, received numerous letters and warnings about the possibilities of integration. One woman from Hopkinsville wrote, “We might as well open the doors to Hell.” Another feared that public pools would be the next to integrate. Governor Chandler also agreed to uphold the decision as “the law of the land.” Wayne County schools were the first to integrate, but the first high school was Lexington Lafayette in 1955, followed by Union County in 1956. Governor Chandler had to call out troops to insure the safety of the nine students who first integrated Union County Schools on August 31, 1956. Louisville began integrating in 1956 also with little opposition. The *New*

¹⁷ *Brown v. The Board of Education of Topeka, Kansas*. 349 U.S. 294, 591 (1954).

¹⁸ Lowell H. Harrison and James C. Klotter, *A New History of Kentucky*. (Lexington, Kentucky: The University Press of Kentucky, 1997), 387.

York Times reported about the peaceful integration in Louisville by saying, "Segregation died quietly here today."¹⁹

More than a "clever, old darky," Edward Claybrook was a brave man who risked everything for the cause he believed in. The town of Owensboro was not ready for such a liberal mind as Claybrook or Judge Barr and was socially behind the times even after *Brown v. Board of Education*. The case had tremendous implications for Owensboro in terms of this progressive nature of its African-American population. Many in both the black and white communities were not ready for such progress. Claybrook and eleven other men, all former slaves, had the vision and foresight to acknowledge in 1883 the very same need that the Supreme Court did not or wanted not to realize until 1954.

¹⁹ibid., 387-388.

VII. Conclusions

The case of *Claybrook v. Owensboro* contained three basic elements: first, a desire for equality; second, a realization of integration as the solution for equality; and third, a continuing struggle with the community, school board, and courts to achieve equality and integration. The implications of the case lasted far after Claybrook's death in 1895. The foresight of the men and attorneys in the case would not completely be realized in Owensboro until 1962.

The desire for equality was rooted in the Fourteenth Amendment's equal protection clause. The group of twelve men who were composed of former slaves realized that this clause embodied equality for all races, and the only way to achieve equal protection was through equality in education for all races. Unfortunately for the men, the Supreme Court did not agree with their idea of equal protection until 1954 with the decision in *Brown v. The Board of Education of Topeka, Kansas*. Nevertheless, bravely and with tremendous eloquence, the group challenged the funding of and accommodations for black schools in Owensboro.

Eventually, the men realized that equality could be achieved only through a battle in the courts. By demanding that their children be enrolled in the Upper or First Ward white school, the group knew that regardless of equalities in funding and facilities, the white schools would

always be superior to the black schools. The demands of the men foreshadowed the opinion in *Brown* which stated that “separate is inherently unequal.”¹ Although integration at Owensboro High School did not occur until 1962 and at the elementary school level until 1965, the men were relentless in their quest for what they saw as the only hopes of attaining true equality.

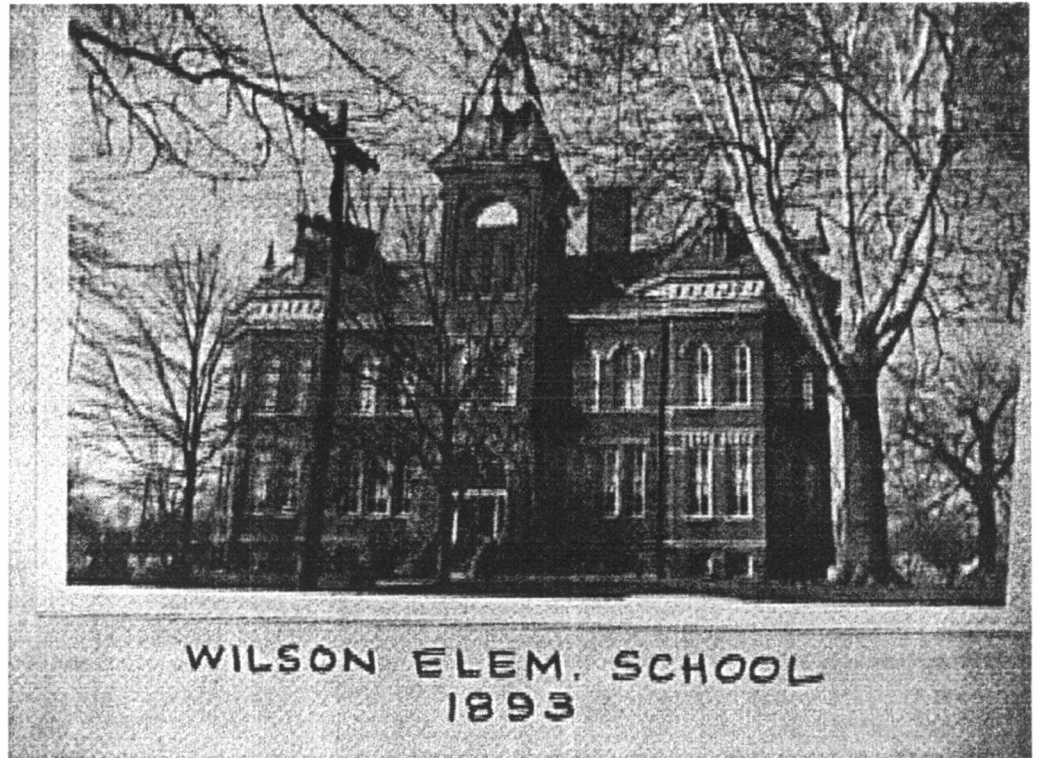
Ultimately, the case of *Claybrook v. Owensboro* led to continued struggles. Even with Judge Barr’s ruling, there was little change in the black schools. The 1896 case of *Plessy v. Ferguson* overturned Barr’s opinion. Plessy, a mulatto, had tried to board a whites-only rail car. The Supreme Court in its opinion established the “separate but equal” doctrine which contended that separate facilities, as long as comparably equal to those of whites, were not in violation of equal protection.² This doctrine, not overturned until 1954, became acceptable practice, not just in education, but for public and private businesses, accommodations, and transportation. In Owensboro, the two sets of schools were terribly unequal. Western High School, the all-black secondary school, was in poor physical condition with few materials and books for its students. When Dunbar, another all-black school was built in the 1920’s, it cost almost one-tenth of Owensboro High School built at the same time. The policy of Owensboro Public Schools after the 1954 *Brown* decision was

¹ *Brown v. Board of Education of Topeka, Kansas*. 349 U.S. 294 (1954).

gradual integration, but during the gradual time it took to do so, black students were being denied an equal opportunity to a basic education.

This case was about more than admitting black children in to white schools. If the Fourteenth Amendment's equal protection clause did not apply to education, then could racial equality ever fully be achieved? The community of Owensboro, the state of Kentucky, and the Supreme Court of the United States decided not to answer that question in 1883.

The First or Upper Ward School



The First Ward School, located on Seventh and Walnut Streets , was an all-white school. Edward Claybrook and other black fathers attempted to enroll their children in the white school.

Taken with permission from:
Owensboro Public Schools Archives, Central Office, 1893.

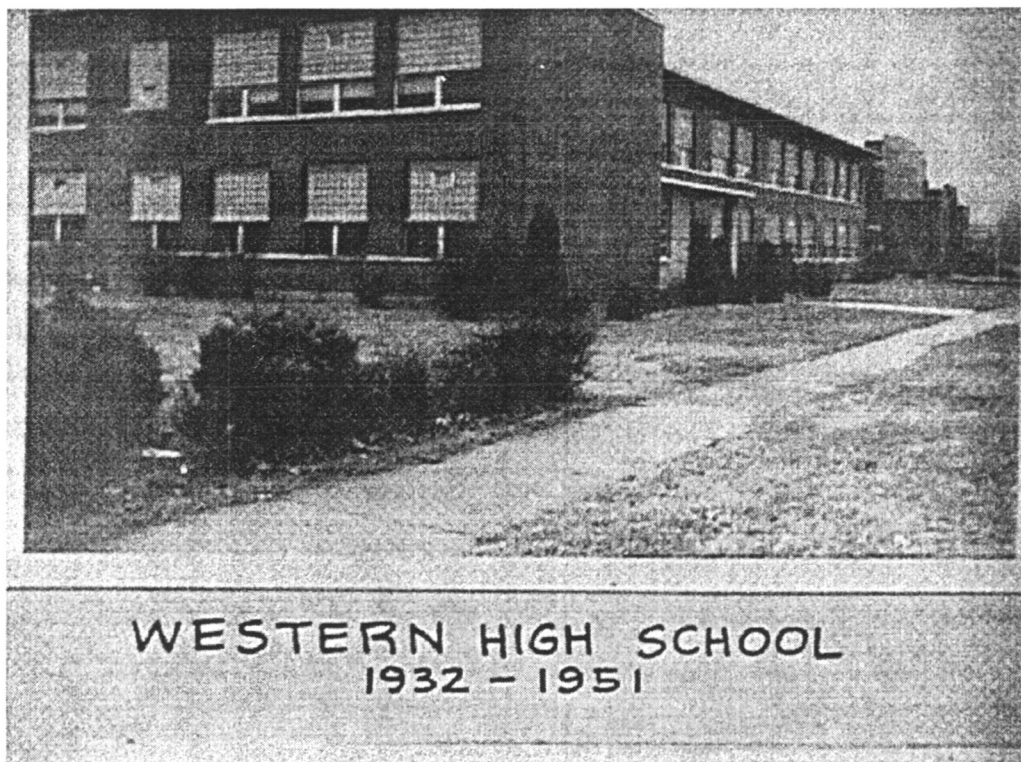
The Original Western High School



The all-black between Poplar and Elm Streets was originally in this portion of the building, which eventually served as the gym.

Taken by Lori Coghill January 6, 2000.

Western High School



Located between Third and Poplar Streets, this school served black students in not only Owensboro but also Ohio and Hancock Counties until 1962.

Taken with permission from:
Owensboro Public Schools Archives, Central Office, 1893.

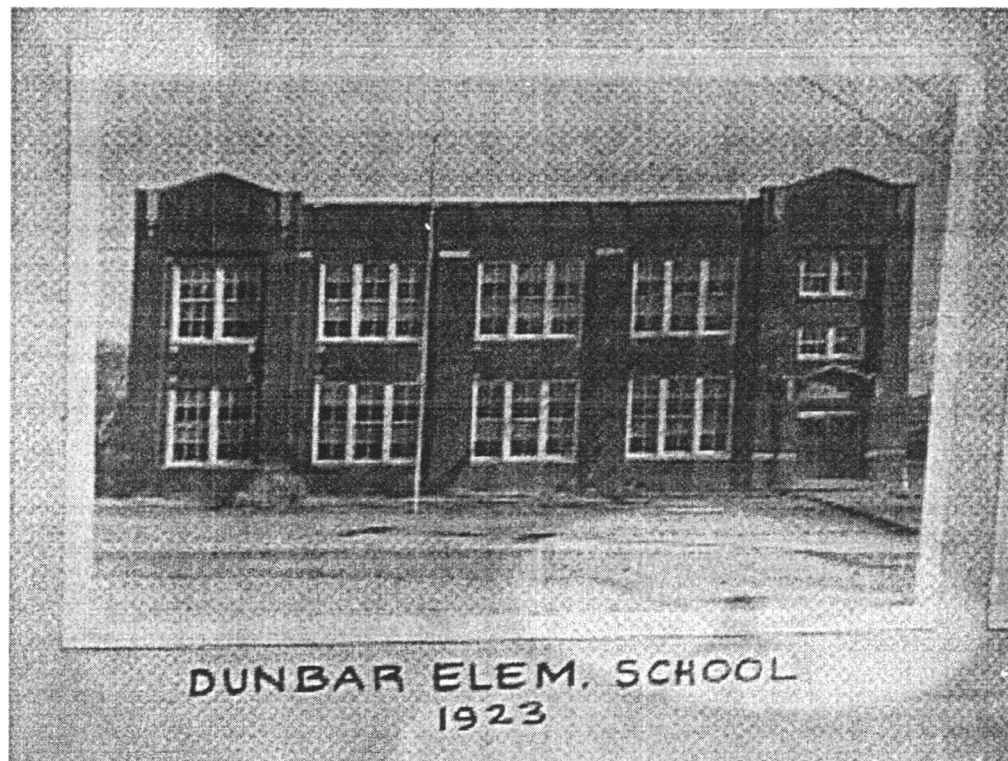
The Location of Former East End Black School



Seventh and Hathaway Streets in Owensboro, the former location of the black school built after the *Claybrook* decision.

Taken by Lori Coghill January 6, 2000.

Paul Dunbar School



This all-black elementary school, located on Seventh and Hathaway Street, served black students in the East End.

The school was constructed at the same time as Owensboro High School for almost one-tenth the price.

Taken with permission from:
Owensboro Public Schools Archives, Central Office, 1923.

The Location of the Claybrook Home



Second and Elms Streets in Owensboro. This corner was where the Claybrook house was located.

Taken by Lori Coghill January 6, 2000.

The Walnut Street Neighborhood Park



The First Ward School, which later became Central Office for Owensboro Public Schools, was torn down in 1977 and made into this public park.

Taken by Lori Coghill January 6, 2000.

Owensboro High School



Completed in 1924 for a little over \$200,000, the original building contained spacious classrooms, a gym, an auditorium with balcony seating, a cafeteria, woodshop, art rooms, and science labs.

Taken with permission from:
Owensboro Public Schools Archives, Central Office, 1999.

Table taken from a brochure:

"Owensboro Public Schools 1890-1891." Twentieth Annual Report. Owensboro, Kentucky: New Inquirer Publishing Company, 1892, p. 19.

TABLE NO. 2 (B)
Summary of Monthly Reports, 1890-91.

	Days Taught	No. Enrolled	No. Belonging	Average Attendance	Average Absence	Tardy.	Reported Disorder	Reported Lessons	Punished	Excluded.
EASTERN COLORED SCHOOL.										
Sept.....	22	128	121	109	12	30			10	
October.....	19	140	130	117	13	72			4	
Nov.....	19	141	129	117	12	16				
Dec.....	18	143	124	110	14	40			8	
Jan.....	20	149	120	99	21	35			9	
Feb.....	20	152	105	87	18	32			6	
March.....	22	163	101	82	19	32			13	
April.....	22	163	98	80	18	41			15	
May.....	21	168	97	90	7	20				
Total.....	183	168	114	99	15	308			65	
WESTERN COLORED SCHOOL.										
Sept.....	22	279	242	221	21	242	11		28	
Oct.....	19	307	276	240	36	293	11		12	
Nov.....	19	307	265	228	38	164	9		10	1
Dec.....	18	307	240	198	42	207			6	
Jan.....	20	318	223	185	43	199			5	
Feb.....	20	318	205	171	34	115	2		2	
March.....	22	318	184	152	32	194			9	
April.....	22	321	166	144	22	273	1		3	
May.....	21	324	158	139	19	186			7	
Total.....	183	324	218	187	31	1873	34		82	1
Total Colored.....	183	492	332	286	46	2181	34		147	1
Grand Total.....	183	1760	1351	1192	159	3433	815	161	267	3

Table taken from a brochure:

"Owensboro Public Schools 1890-1891." Twentieth Annual Report. Owensboro, Kentucky: New Inquirer Publishing Company, 1892, p. 21.

TABLE NO. 3 (B)

COLORED.	Grade.	Enrolled.	Promoted.	Conditioned.	Failed.	Withdrawn.
Flora Hussey.....	1	66				
	2	24				
D. M. Wheeler.....	2	35	18		4	13
	3	22	4		5	13
	4	21	8		3	10
Total.....		108				
N. N. Lawson.....	1	133	13	6	40	74
L. Levy.....	1	53	13	9	4	27
	4	21	6	2	1	12
Mrs. Manwaring.....	2	7			5	2
	5	34	6	5	6	17
	6	18	7			11
Mr. Manwaring.....	3	48	19	3	6	20
	7	10	1		1	8
Total.....		324	65	25	63	171

Table taken from a brochure:

"Public School Buildings in Owensboro, Kentucky." A Survey Report Prepared by the Bureau of School Service.
Vol. XIX, No. 2, Lexington, Kentucky: University of Kentucky Press, 1946, p. 30.

Table 1. Total Population, School Census, and Public School Membership in Owensboro Since 1920

Year	Total Population			School Census			Public School Membership		
	White	Negro	Total	White	Negro	Total	White	Negro	Total
1920	14,588	2,836	17,424	4,103	729	4,832	*2,786	*493	3,27
1930	20,256	2,509	22,765	4,228	622	4,850	3,333	488	3,82
1940	27,385	2,860	30,245	5,559	559	6,118	4,032	†517	4,54
1946	‡30,000	‡3,000	‡33,000	5,635	499	6,134	3,772	†533	4,30

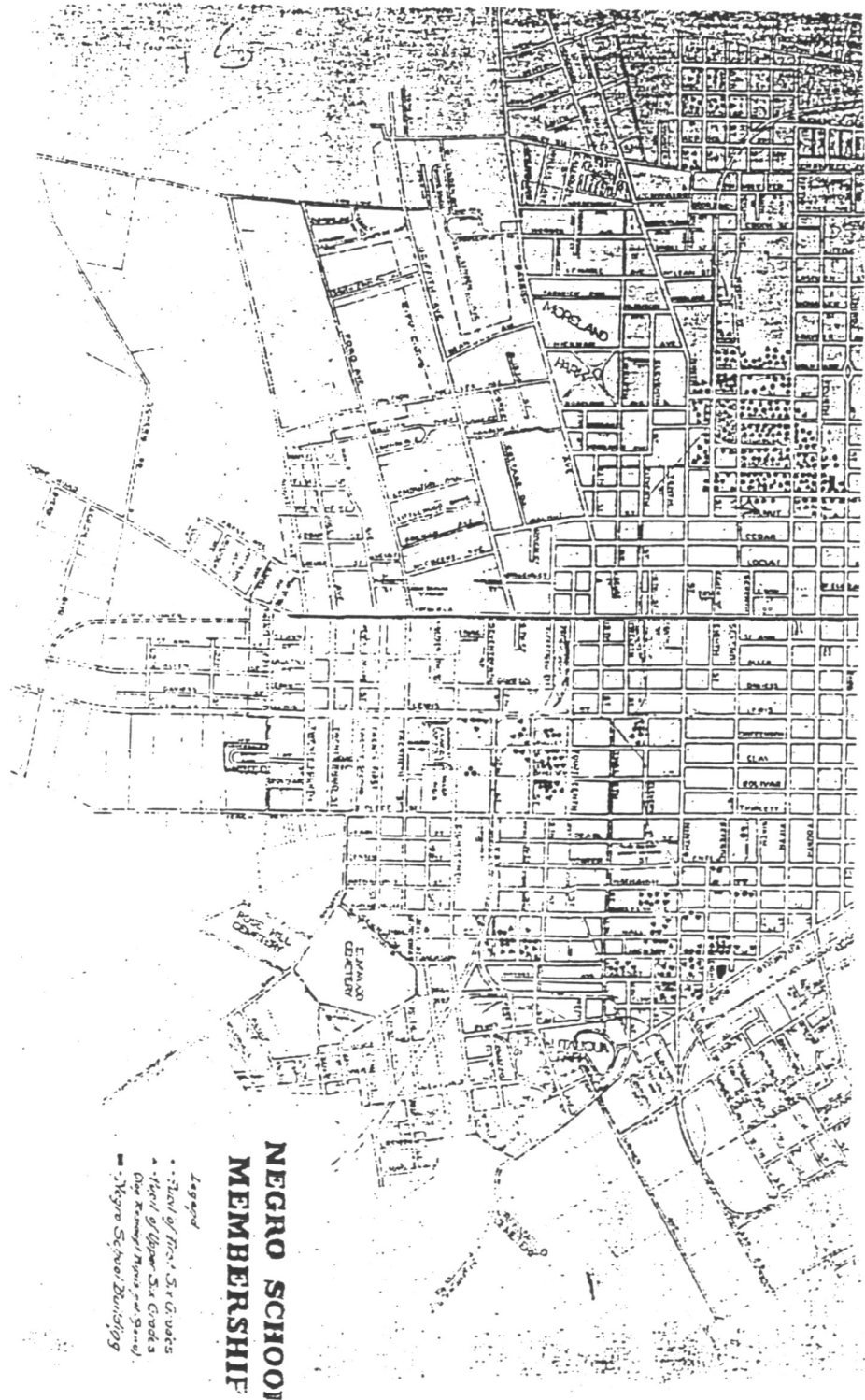
* Average for the school year. For 1930, 1940, and 1946, membership in January is shown.

† Includes approximately 100 pupils each year from the county.

‡ Estimated.

Map taken from a brochure:

"Public School Buildings in Owensboro, Kentucky." A Survey Report Prepared by the Bureau of School Service.
Vol. XIX, No. 2, Lexington, Kentucky: University of Kentucky Press, 1946, p. 39.



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